

RM 99-001

In the Matter of \_\_\_\_\_  
IN THE MATTER OF THE  
ESTABLISHMENT OF NEW AND  
REVISED TELECOMMUNICATIONS  
RULES

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
4/8 99	Opened;
4/8 99	Fiscal Note signed by James G. Berg;
4/8 99	Admission of Service signed by Dave Vick (Comm + Reg);
4/8 99	Notice of Filing Period signed by Dave Vick (Comm + Reg);
4/12 99	Notice of Public Hearing to Adopt Rules;
4/12 99	Admission of Service signed by Lari Wilson (BYM);
4/12 99	Admission of Service signed by R. Puckapile (XRC);
4/14 99	Affidavit of Filing Notice to Interested Parties;
4/14 99	Fiscal Note signed by Curtis A. Emerson (BYM);
4/15 99	Weekly Filing;
5/1 99	Affidavit of Publication from the Capital Journal;
5/1 99	Affidavit of Publication from the Black Hills Pioneer;
5/12 99	Comments from Thicks;
5/12 99	Affidavit of Publication from the Brookings Register;
5/21 99	Comments of AARP;
5/21 99	Comments of Sprint;
5/24 99	Comments of Billing Concepts, Inc.;
5/24 99	Comments of SDITE;
5/24 99	Comments of AT&T;
5/24 99	Comments of MCI-W;
5/24 99	Comments of US West;
5/28 99	Minutes of Public Hearing;
5/28 99	Approval of Rules;



5/28/99	Up bid out,
6/11/99	Certified,
7/3/99	Market Closed

## **ARTICLE 20:10**

### **PUBLIC UTILITIES**

#### **Chapter**

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules.
- 20:10:03 Motor carriers under ICC.
- 20:10:04 Motor carriers not under ICC.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public warehouses.
- 20:10:12 Grain dealers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities, Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.

- 20:10:21 Energy facility plans.
- 20:10:22 Energy facility siting rules.
- 20:10:23 Gas and electric advertising rules.
- 20:10:24 Telecommunications services Interexchange carrier and classification rules.
- 20:10:25 Telecommunications facility construction notice rules, Repealed.
- 20:10:26 Master metering variance rules.
- 20:10:27 Telecommunications switched access filing rules.
- 20:10:28 Telecommunications separations procedures.
- 20:10:29 Telecommunications switched access charges.
- 20:10:30 Assignment of N11 dialing codes.
- 20:10:31 Assessment of fees for intrastate gas pipeline operators.
- 20:10:32 Local exchange service competition.
- 20:10:33 Service standards for telecommunications companies.
- 20:10:34 Prohibition against unauthorized ~~switching changing of carriers~~  
telecommunications company and charging for unauthorized services.

#### CHAPTER 20:10:34

### PROHIBITION AGAINST UNAUTHORIZED ~~SWITCHING CHANGING OF~~ ~~CARRIERS~~ TELECOMMUNICATIONS COMPANY AND CHARGING FOR UNAUTHORIZED SERVICES

#### Section

- 20:10:34:01 ~~Definitions~~ Repealed.
- 20:10:34:02 ~~Requirements for independent third-party verification~~ Repealed.
- 20:10:34:02.01. Authorization methods.

20:10:34:03 Letter of agency form and content.

20:10:34:04 ~~Letter of agency form and content~~ -- Exception for checks.

20:10:34:04.01 Electronic authorization.

20:10:34:05 Complaints of unauthorized ~~switching~~ changing of a telecommunications company.

20:10:34:06 False, misleading, or deceptive statements prohibited.

20:10:34:07 Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing.

20:10:34:08 Subscriber telecommunications bills -- Charges for change of telecommunications company.

20:10:34:09 Billing requirements.

20:10:34:10 ~~Authorized products or services~~ Notification of increase in rates.

20:10:34:10.01 Complaints of unauthorized billing of products or services.

20:10:34:11 Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing.

~~20:10:34:01. Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

~~(1) "Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~

20:10:34:02. Requirements for independent third-party verification. When an

independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interchange or local-exchange telecommunications services, the third-party verification shall include:

(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested

interchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;

(3) Verification data unique to the subscriber such as the subscriber's date of birth;

and

(4) The name and toll-free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record, in its entirety, the

telephone call that confirms the subscriber's change of a designated telecommunications



~~company. The electronic recording shall be retained by the third-party verification company for 12 months.~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: ~~SDCL 49-31-77, 49-31-85.~~

Law Implemented: ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

20:10:34:02.01. Authorization methods. No telecommunications company shall change a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-90, 49-31-91.

20:10:34:03. Letter of agency form and content. A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a document the sole purpose of which is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the change order;

(2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;

(3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;

(4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's ~~interstate~~ interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's ~~intrastate~~ intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;

(5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;

(6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;

(7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications ~~carrier~~ company;

(8) If any portion of a letter of agency is translated into another language then each portion of the letter ~~or~~ of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and

(9) A toll-free number ~~that the subscriber may call to verify if the change has occurred~~ of the prospective telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-304-9, 49-31-3, 49-31-76, 49-31-85~~ 49-31-89.

**20:10:34:04. ~~Letter of agency form and content~~ — Exception for checks.**

Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-304-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:04.01. Electronic authorization.** Telecommunications companies electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Calls to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated



telecommunications company, including automatically recording the originating automatic numbering identification.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89.

20:10:34:05. Complaints of unauthorized switching changing of a telecommunications company. Upon receipt of an oral or written complaint alleging an unauthorized ~~switch in~~ change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall investigate the complaint and advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide documentation, without cost to the commission or the subscriber, that confirms the subscriber's valid authorization to switch telecommunications companies. This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber provide documentation, within 30 days and without cost, showing that the change was authorized. If a telecommunications company fails to provide the documentation, the change ~~in~~ of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77; 49-31-85; 49-31-5 (2)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-90, 49-31-92, 49-31-93 .

**20:10:34:06. False, misleading, or deceptive statements prohibited.** When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing.** A telecommunications company which initiates a telecommunications ~~carrier~~ company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which were paid by the subscriber and are attributable to telephone

~~service telecommunications services from the unauthorized telecommunications~~  
~~company. If the unauthorized services were billed but not paid by the subscriber, the~~  
~~subscriber is not liable for the billed telephone services provided by the unauthorized~~  
~~telecommunications carrier.~~ A telecommunications company which initiates a  
telecommunications ~~carrier~~ company change without authorization from the subscriber is  
liable for any charges from another telecommunications company to re-establish service  
or to change the subscriber's pre-subscribed company. The appropriate credit or refund  
must be issued within a period not to exceed 60 days from the date it is determined that  
the ~~switch~~ change was unauthorized.

In addition, the telecommunications company which initiates a  
telecommunications company change without proper authorization shall pay the  
subscriber one thousand dollars regardless of whether the subscriber has contacted the  
commission. Failure of the telecommunications company to pay the subscriber one  
thousand dollars for an unauthorized change may result in a civil fine as authorized by  
SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized,  
the subscriber or telecommunications company may request a hearing before the  
commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5(4)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-  
31-93, 49-31-94.

20:10:34:08. Subscriber telecommunications bills -- Charges for change of  
telecommunications company. A bill to a subscriber reflecting any charge to that

~~subscriber~~ for a change in the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing a to the new telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:09. Billing requirements.** A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:10. ~~Authorized products or services~~ Notification of increase in rates.**

~~Any products or services listed on a subscriber's bill must be authorized by the subscriber.~~ Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change if it results in an increase in rates.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:10.01. Complaints of unauthorized billing of products or services.**

Upon receipt of an oral or written complaint alleging the billing of unauthorized products



or services from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-93.

20:10:34;11. Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing. A telecommunications company which charges initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber one thousand dollars for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or

telecommunications company may request a hearing before the commission pursuant to

SDCL Chapter 1-26.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-20A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.

**ADMINISTRATIVE PROCEDURES ACT  
FISCAL NOTE**

*Prepared by Submitting Agency*

	CODE	NAME
DEPARTMENT	13	Department of Commerce + Regulation
DIVISION	139	Public Utilities Commission
PROGRAM	1393	Fixed Utilities Division

PROPOSED RULE 20:10:34:01 through 20:10:34:11, inclusive  
Hearing Date May 13, 1999

**FISCAL NOTE SUMMARY:**

List state agencies of local governmental subdivisions affected.

**COST INCREASES (DECREASES)**

State Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0
Local Subdivisions:	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0
Revenue Increases (Decreases) State & Local:	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0

APPROVED

*James A. Burg*  
Signature Department Secretary or Board or Commission Chairman

DATE 4-8-99

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made.

**ARTICLE 20:10**  
**PUBLIC UTILITIES**

**Chapter**

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules.
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telecommunications company and charging for unauthorized services.

#### CHAPTER 20:10:34

### **PROHIBITION AGAINST UNAUTHORIZED ~~SWITCHING~~ CHANGING OF ~~CARRIERS~~ TELECOMMUNICATIONS COMPANY AND CHARGING FOR UNAUTHORIZED SERVICES**

#### Section

- 20:10:34:01 ~~Definitions~~ Repealed.
- 20:10:34:02 ~~Requirements for independent third-party verification~~ Repealed.
- 20:10:34:02.01. Authorization methods.

20:10:34:03 Letter of agency form and content.

20:10:34:04 ~~Letter of agency form and content~~ Exception for checks.

20:10:34:04.01 Electronic authorization.

20:10:34:05 Complaints of unauthorized ~~switching~~ changing of a telecommunications company.

20:10:34:06 False, misleading, or deceptive statements prohibited.

20:10:34:07 Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing

20:10:34:08 Subscriber telecommunications bills -- Charges for change of telecommunications company.

20:10:34:09 Billing requirements.

20:10:34:10 ~~Authorized products or services~~ Notification of increase in rates.

20:10:34:10.01 Complaints of unauthorized billing of products or services.

20:10:34:11 Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing.

20:10:34:01. Definitions. ~~Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

(1) ~~"Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-3~~ 85.

20:10:34:02. Requirements for independent third-party verification. When an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the third-party verification shall include:

(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;

(3) Verification data unique to the subscriber such as the subscriber's date of birth;  
and

(4) The name and toll-free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications

~~company. The electronic recording shall be retained by the third-party verification company for 12 months. Repealed.~~

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

20:10:34:02.01. Authorization methods. No telecommunications company shall change a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-90, 49-31-91.

20:10:34:03. Letter of agency form and content. A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a document the sole purpose of which is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the change order;



(2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;

(3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;

(4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's ~~interstate~~ interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's ~~intrastate~~ intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;

(5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;

(6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;

(7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications ~~carrier~~ company;

(8) If any portion of a letter of agency is translated into another language then each portion of the letter ~~or~~ of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and

(9) A toll-free number ~~that the subscriber may call to verify if the change has occurred~~ of the prospective telecommunications company.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-76, 49-31-85~~ 49-31-89.

**20:10:34:04. Letter of agency form and content -- Exception for checks.**

Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:04.01. Electronic authorization. Telecommunications companies**

electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Calls to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated

telecommunications company, including automatically recording the originating  
automatic numbering identification.

**Source:**

**General Authority:** SDCL 49-31-89.

**Law Implemented:** SDCL 49-31-89.

**20:10:34:05. Complaints of unauthorized switching changing of a telecommunications company.** Upon receipt of an oral or written complaint alleging an unauthorized switch in change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall ~~investigate the complaint and advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide~~ documentation, without cost to the commission or the subscriber, that confirms the subscriber's valid authorization to switch telecommunications companies. This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber provide documentation, within 30 days and without cost, showing that the change was authorized. If a telecommunications company fails to provide the documentation, the change ~~in~~ of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (2)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-90, 49-31-92, 49-31-93 .

**20:10:34:06. False, misleading, or deceptive statements prohibited.** When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing.** A telecommunications company which initiates a telecommunications ~~carrier~~ company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which ~~were paid by the subscriber and are attributable to telephone~~



~~telecommunications services~~ from the unauthorized telecommunications company. ~~If the unauthorized services were billed but not paid by the subscriber, the subscriber is not liable for the billed telephone services provided by the unauthorized telecommunications carrier.~~ A telecommunications company which initiates a telecommunications ~~carrier~~ company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the ~~switch~~ change was unauthorized.

In addition, the telecommunications company which initiates a telecommunications company change without proper authorization shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber one thousand dollars for an unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (4)~~ 49-31-89.

Law Implemented: SDCL ~~27-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.

**20:10:34:08. Subscriber telecommunications bills – Charges for change of telecommunications company.** A bill to a subscriber reflecting any charge to that

~~subscriber~~ for a change in the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing ~~a~~ to the new telecommunications company.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-5(3), 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:09. Billing requirements.** A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL 49-31-77, 49-31-85, 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85,~~ 49-31-89.

**20:10:34:10. ~~Authorized products or services~~ Notification of increase in rates.**

~~Any products or services listed on a subscriber's bill must be authorized by the subscriber.~~ Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change if it results in an increase in rates.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL 49-31-77, 49-31-85, 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85,~~ 49-31-89.

**20:10:34:10.01. Complaints of unauthorized billing of products or services.**

Upon receipt of an oral or written complaint alleging the billing of unauthorized products

or services from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-93.

**20:10:34:11. Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing.** A telecommunications company which ~~charges~~ initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission.  
Failure of the telecommunications company to pay the subscriber one thousand dollars for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or



telecommunications company may request a hearing before the commission pursuant to

SDCL Chapter 1-26.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** ~~SDCL 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.

telecommunications company may request a hearing before the commission pursuant to

SDCL Chapter 1-26.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-

11-93, 49-31-94.

### EXPLANATION OF RULES EFFECT

The Public Utilities Commission will hold a public hearing in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on May 13, 1999, at 1:30 p.m., to consider the adoption and amendment of proposed rules numbered §§ 20:10:34:01 to 20:10:34:11, inclusive.

The effects of the proposed rules in §§ 20:10:34:01 to 20:10:34:11, inclusive, are to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. The proposed rules state the procedures for changing telecommunications carriers and list billing requirements. The proposed rules also state the company's liability for unauthorized changing of telecommunications companies or charging for unauthorized services.

Since the reasons for the proposed rules are to set the standards and penalties concerning the changing of telecommunications companies and to set standards and penalties concerning the billing of customers, there are no fiscal impacts on state agencies or local governmental subdivisions.




IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive; and
- (2) all materials incorporated by reference

is hereby admitted at Pierre, South Dakota, this 9<sup>th</sup> day of April, 1999.

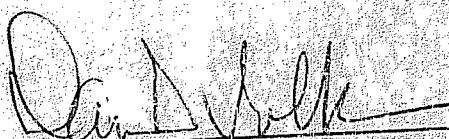
  
Secretary of Department of Commerce and Regulation

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

WAIVER OF WAITING PERIOD

Pursuant to SDCL subdivision 1-26-4(2), I, David Volk, Secretary of Department of Commerce and Regulation, waive the fifteen-day waiting period before proceeding with the promulgation of the Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive.

Dated this 9<sup>th</sup> day of April, 1999.



Secretary of Department of Commerce and Regulation



IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive,
- (2) the notice of hearing, and
- (3) the fiscal note

is hereby admitted at Pierre, South Dakota, this 12<sup>th</sup> day of April, 1999.

Lori Wilson  
Bureau of Finance and Management

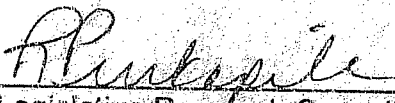
IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

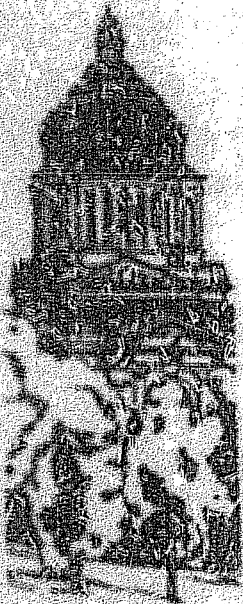
ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:34.01 to 20:10:34.11, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note, and
- (4) all materials incorporated by reference

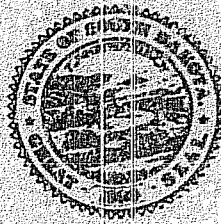
is hereby admitted at Pierre, South Dakota, this 12<sup>th</sup> day of April, 1999.

  
\_\_\_\_\_  
Legislative Research Council



# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



April 12, 1999

Capital Office  
Telephone (605) 773-3241  
Fax (605) 773-3889

Transmission  
Workman Division  
Telephone (605) 773-3206  
Fax (605) 773-3113

Consumer Hotline  
1-800-333-1112

TV Channel 4  
Radio South Dakota  
1-800-333-1113

Internet Website  
www.puc.sd.gov

Jim Berg  
Chairman  
Paul Nelson  
Vice Chairman  
Linda Nelson-Wiest  
Commissioner

William D. Hahn Jr.  
Executive Director

Thomas West  
Michael C. Dwyer  
Sue Carson  
Karen E. Carter  
Michael M. Farris  
Markus Fickert  
Sharon Fegitt  
Loren Hammond  
Lara Hall  
Loren Hirsch  
Lisa Hurl  
Lester Ingham  
Katie Johnson  
Bob Koeffe  
Dianne Koller  
Jeffrey P. Lammien  
Charles Lund  
Terry Martin  
Gregory A. Miller  
Keith Nager  
Rosalyn A. West

Capital Journal  
P. O. Box 878  
Pierre, SD 57501

To whom it may concern:

Please publish the enclosed notice in your paper as a display advertisement for one issue by April 20, 1999.

South Dakota law requires that this notice be published as a display advertisement. Your failure to return your Affidavit of Publication containing the words "display advertisement" with your invoice will nullify your claim for publication fees.

Sincerely yours,

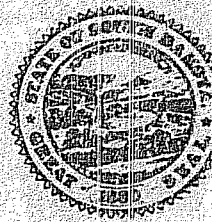
*Rosalyn A. Wiest*

Rosalyn A. Wiest  
Commission Counsel

RAW:dk  
Enc.



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



April 12, 1999

Brookings Register  
P. O. Box 177  
Brookings, SD 57006

To whom it may concern:

Please publish the enclosed notice in your paper as a display advertisement for one issue by April 20, 1999.

South Dakota law requires that this notice be published as a display advertisement. Your failure to return your Affidavit of Publication containing the words "display advertisement" with your invoice will nullify your claim for publication fees.

Sincerely yours,

Rayn. Selt. West

**Rolayne Ailts Wiest  
Commission Counsel**

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1. 大正十一年（一九二二年）  
2. 大正十三年（一九二四年）  
3. 大正十五年（一九二六年）

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王明賢、張國華、李國華

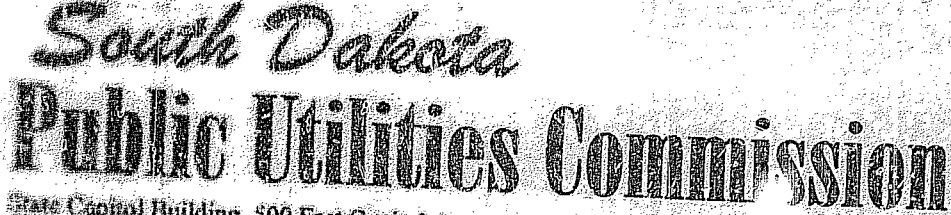
THE UNIVERSITY OF CHICAGO

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State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



Black Hills Pioneer  
Attention: Paula  
P. O. Box 7  
Spearfish, SD 57783

To whom it may concern:

Please publish the enclosed notice in your daily paper as a display advertisement for one issue by April 20, 1999.

South Dakota law requires that this notice be published as a display advertisement. Your failure to return your Affidavit of Publication containing the words "display advertisement" with your invoice will nullify your claim for publication fees.

Sincerely yours,

Kolayn Sektür

## Holzman Aids West Commission Counsel

RAW dk  
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Public Utilities Commission  
Notice of Public Hearing to Adopt Rules

A public hearing will be held in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on May 13, 1999, at 1:30 p.m., to consider the adoption and amendment of proposed rules numbered

20:10:34:01 to 20:10:34:11, inclusive

The effects of the proposed rules in §§ 20:10:34:01 to 20:10:34:11, inclusive, are to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. The proposed rules state the procedures for changing telecommunications companies and list billing requirements. The proposed rules also state the company's liability for unauthorized changing of telecommunications companies or charging for unauthorized services.

The reasons for the proposed rules are to set new and revised standards and penalties concerning the changing of telecommunications companies and to set new and revised standards and penalties concerning the billing of customers.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must reach the Public Utilities Commission by May 24, 1999, to be considered.

After the hearing, the Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Public Utilities Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-5201.

Copies of the proposed rules may be obtained without charge from the


South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address: <http://www.state.sd.us/puc>.


N THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

AFFIDAVIT OF MAILING NOTICE  
TO INTERESTED PARTIES

I, Delaine Kolbo, under oath, do swear, that on April 14, 1999, I mailed a copy of the notice attached to this affidavit to the list of persons attached to this affidavit. I further swear that the attached list is a true and correct list of all persons who have requested advance notice of rulemaking proceedings by the Public Utilities Commission.

  
Delaine Kolbo

Subscribed and sworn to  
before me this 14th day  
of April, 1999.

  
Notary Public - South Dakota

(SEAL)

My Commission Expires

19\_\_

**CAROL N. JOCKE**  
Notary Public  
My Commission Expires May 15, 2002

Public Utilities Commission  
Notice of Public Hearing to Adopt Rules

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20:10:34:01 to 20:10:34:11, inclusive

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Copies of the proposed rules may be obtained without charge from the

South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address: <http://www.state.sd.us/puc>.

JOHN LUNN  
DIRECTOR REGULATORY AFFAIRS  
U.S. WEST COMMUNICATIONS, INC.  
115 SOUTH DAKOTA AVENUE  
SIOUX FALLS SD 57104-0002

LINDA MICHMAN  
REGULATORY AFFAIRS  
QCC, INCORPORATED  
6225 SECOND STREET  
OVERLAND PARK KS 66214-1707

PATRICK MORSE  
GENERAL MANAGER  
KANSAS TELEPHONE COMPANY  
PO BOX 120  
KANSAS SD 57543-0220

MICHAEL THORNE  
STATE TARIFF ANALYST  
SPRINT COMMUNICATIONS COMPANY L.P.  
3145 WARD PARKWAY  
KANSAS CITY MO 64114-0417

JANET PROCHASKA  
DIRECTOR REGULATORY AFFAIRS  
INTERNATIONAL COMMUNICATIONS  
1100 WOODLAWN AVENUE  
OMAHA NE 68134-1604

LEWIS VAN NEEVELN  
WAGNER MOBILE PHONE, INC.  
PO BOX 607  
WAGNER SD 57380

GENESE A EDWARDS  
SECRETARY  
UTAH LINK COMM DBA FAMILY TELECOM  
3835 N CENTRAL AVENUE SUITE 2-1  
PHOENIX AZ 85012

J.D. WILLIAMS  
CHIEF OF RIVER SIOUX TRIBE TEL.  
PO BOX 810  
SIOUX FALLS SD 57105-0810

NCL SCHMID  
FESTEL, INC.  
110 E PHILLIPS STE 202  
SIOUX FALLS SD 57102

ROGER L JOHNSON  
GENERAL MANAGER  
DICKET RURAL TELEPHONE COOPERATIVE  
PO BOX 69  
WILLIAMS ND 58436-0069

TINA TECCE  
COMPLIANCE MANAGER  
TEL-SAVE, INC  
6805 ROUTE 202  
NEW HOPE PA 18938

THOMAS W HERTZ  
DCT  
PO BOX 66  
IRENE SD 57037

JIM WILCOX  
GENERAL MANAGER  
NSP  
PO BOX 988  
SIOUX FALLS SD 57101-0988

F. THOMAS TUTTLE  
ATTORNEY AT LAW  
CELLULAR EXPRESS, INC.  
1200 19TH STREET, N.W., SUITE. 607  
WASHINGTON DC 20036

RUSSELL SARAZEN  
REGULATORY COMPLIANCE  
COMMNET CELLULAR, INC.  
8350 E CRESCENT PKWY STE 400  
ENGLEWOOD CO 80111

PAMELA HARRINGTON  
MANAGER  
ROBERTS COUNTY TELEPHONE COOP.  
PO BOX 197  
NEW EFFINGTON SD 57255-0197

MAX TITE  
GENERAL MANAGER  
VALLEY TELEPHONE COMPANY  
1203 9TH AVENUE S E  
WATERTOWN SD 57201

ADAM KOLODNY  
REGULATORY/FINANCIAL AFFAIRS  
PARCEL CONSULTANTS, INC.  
300 BROADACRES DR  
BLOOMFIELD NJ 07003

WESLEY O'BRIEN  
PRESIDENT AND CEO  
TRESKOM U.S.A., INC.  
200 EAST BROWARD BLVD SUITE 2100  
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**ADMINISTRATIVE PROCEDURES ACT**  
**FISCAL NOTE**  
 Prepared by Submitting Agency

	CODE	
DEPARTMENT	13	Commerce and Regulation
DIVISION	9	Public Utilities Commission
PROGRAM	3	Fixed Utilities Division

PROPOSED RULE 20:10:34-01 through 20:10:34-11, inclusive  
 Hearing Date May 13, 1999

**FISCAL NOTE SUMMARY:**

List state agencies of local governmental subdivisions affected.

**COST INCREASES (DECREASES)**

STATE AGENCY	First Year Impact	Continuing Annual Impact
TOTAL	-0-	-0-
TOTAL	-0-	-0-
TOTAL	-0-	-0-

APPROVED

*Curtis A. Evers*

DATE 04/12/1999

Signature Department Secretary or Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made



**DEPARTMENT OF EXECUTIVE MANAGEMENT**

BUREAU OF FINANCE AND MANAGEMENT

500 East Capitol, Pierre, SD 57501

(605) 773-3411

FAX: (605) 773-4711

GREAT FACES. GREAT PLACES.

April 14, 1999

The Bureau of Finance and Management has reviewed the attached proposed rules from the Public Utilities Commission and concurs with the assumptions and fiscal impact calculations within the attached package.

  
DLW

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive,
- (2) the notice of hearing, and
- (3) the fiscal note

is hereby admitted at Pierre, South Dakota, this 12<sup>th</sup> day of April, 1999.

*Lori Wilson*

Bureau of Finance and Management



IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

WAIVER OF WAITING PERIOD

Pursuant to SDCL subdivision 1-26-4(2), I, David Volk, Secretary of Department of Commerce and Regulation, waive the fifteen-day waiting period before proceeding with the promulgation of the Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive.

Dated this 9<sup>th</sup> day of April, 1999.



Secretary of Department of Commerce and Regulation

	CODE	NAME
DEPARTMENT	13	Department of Commerce + Regulation
DIVISION	139	Public Utilities Commission
PROGRAM	1393	Fixed Utilities Division

## FISCAL NOTE SUMMARY:

PERCENT INCREASES (DECREASES)

Sixty Agencies:	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0
Local Subdivisions:		
TOTAL	0	0
Revenue Increases (Decreases)		
State & Local:		
TOTAL	0	0

APPROVED

*James A. Burg*  
Signature Department Secretary or Board

DATE \_\_\_\_\_

4-8-95

**ATTACH:** Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made.

## ARTICLE 20:10

### PUBLIC UTILITIES

#### Chapter

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules.
- 20:10:03 Motor carriers under ICC.
- 20:10:04 Motor carriers not under ICC.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public warehouses.
- 20:10:12 Grain dealers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities, Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.

20:10:34:03 Letter of agency form and content.

20:10:34:04 ~~Letter of agency form and content~~ -- Exception for checks.

20:10:34:04.01 Electronic authorization.

20:10:34:05 Complaints of unauthorized ~~switching~~ changing of a telecommunications company.

20:10:34:06 False, misleading, or deceptive statements prohibited.

20:10:34:07 Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing.

20:10:34:08 Subscriber telecommunications bills -- Charges for change of telecommunications company.

20:10:34:09 Billing requirements.

20:10:34:10 ~~Authorized products or services~~ Notification of increase in rates.

20:10:34:10.01 Complaints of unauthorized billing of products or services.

20:10:34:11 Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing.

20:10:34:01. **Definitions.** ~~Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

~~(1) "Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~



~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

~~20:10:34:02. Requirements for independent third-party verification. When an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the third-party verification shall include:~~

~~(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;~~

~~(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;~~

~~(3) Verification data unique to the subscriber such as the subscriber's date of birth, and~~

~~(4) The name and toll-free telephone number of the newly requested telecommunications company.~~

~~The third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications~~

~~company. The electronic recording shall be retained by the third-party verification company for 12 months.~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: ~~SDCL 49-31-77, 49-31-85.~~

Law Implemented: ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

20:10:34:02.01. Authorization methods. No telecommunications company shall change a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

Source:

General Authority: ~~SDCL 49-31-89.~~

Law Implemented: ~~SDCL 49-31-89, 49-31-90, 49-31-91.~~

20:10:34:03. Letter of agency form and content. A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a document the sole purpose of which is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the change order;

- (2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;
- (3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;
- (4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's ~~interstate~~ interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's ~~intrastate~~ intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;
- (5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;
- (6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;
- (7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications ~~carrier~~ company;
- (8) If any portion of a letter of agency is translated into another language then each portion of the letter ~~or~~ of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and
- (9) A toll-free number ~~that the subscriber may call to verify if the change has occurred~~ of the prospective telecommunications company.

~~Source: 25 SDR 89, effective December 27, 1998.~~

~~General Authority: SDCL 49-31-5(2), 49-31-77, 49-31-85 49-31-89.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-76, 49-31-85 49-31-89.~~

~~20:10:34:04. Letter of agency form and content-- Exception for checks.~~

~~Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.~~

~~Source: 25 SDR 89, effective December 27, 1998.~~

~~General Authority: SDCL 49-31-5(2), 49-31-77, 49-31-85 49-31-89.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85 49-31-89.~~

~~20:10:34:04.01. Electronic authorization. Telecommunications companies~~

~~seeking to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Calls to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated~~



telecommunications company, including automatically recording the originating automatic numbering identification.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89.

**20:10:34:05. Complaints of unauthorized switching changing of a telecommunications company.** Upon receipt of an oral or written complaint alleging an unauthorized switch in change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall ~~investigate the complaint and advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide~~ documentation, without cost to the commission or the subscriber, that confirms the subscriber's valid authorization to switch telecommunications companies. ~~This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber provide~~ documentation, within 30 days and without cost, showing that the change was authorized. If a telecommunications company fails to provide the documentation, the change ~~in~~ of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (2)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-90, 49-31-92, 49-31-93.

20:10:34:06. False, misleading, or deceptive statements prohibited. When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company -- Payment of one thousand dollars for unauthorized change -- Opportunity for hearing. A telecommunications company which initiates a telecommunications ~~carrier~~ company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which ~~were paid by the subscriber and~~ are attributable to telephone

~~service telecommunications services~~ from the unauthorized telecommunications company. ~~If the unauthorized services were billed but not paid by the subscriber, the subscriber is not liable for the billed telephone services provided by the unauthorized telecommunications carrier.~~ A telecommunications company which initiates a telecommunications ~~carrier~~ company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the switch change was unauthorized.

In addition, the telecommunications company which initiates a telecommunications company change without proper authorization shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber one thousand dollars for an unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (4)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.

20:10:34:08. Subscriber telecommunications bills -- Charges for change of telecommunications company. A bill to a subscriber reflecting any charge to that

~~subscriber~~ for a change in the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing a to the new telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(3), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:09. Billing requirements.** A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85,~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85,~~ 49-31-89.

**20:10:34:10. ~~Authorized products or services~~ Notification of increase in rates.**

~~Any product or service listed on a subscriber's bill must be authorized by the subscriber.~~ Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change if it results in an increase in rates.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85,~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85,~~ 49-31-89.

**20:10:34:10.01. Complaints of unauthorized billing of products or services.**

Upon receipt of an oral or written complaint alleging the billing of unauthorized products



or services from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-93.

20:11:34:11. Refund or credit of unauthorized charges -- Payment of one thousand dollars -- Opportunity for hearing. A telecommunications company which charges initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber one thousand dollars for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or

telecommunications company may request a hearing before the commission pursuant to

SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-91, 49-31-94.

South Dakota Public Utilities Commission  
**WEEKLY FILINGS**  
For the Period of April 8, 1999 through April 14, 1999

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.  
Phone: 605-773-3705 Fax: 605-773-3809

**GAS AND ELECTRIC**

**GE99-002** In the Matter of the Filing by Northwestern Public Service Company for Approval to Add Language to its Customers' Bills

Application by Northwestern Public Service Company to publish information on bills concerning customer's ability to pay by credit card.

Staff Analyst: Dave Jacobson

Staff Attorney: Karen Cremer

Date Filed: 04/12/99

Intervention Deadline: NA

**RULE MAKING**

**RE99-001** In the Matter of the Establishment of New and Revised Telecommunications Rules.

On April 8, 1999, the Commission opened a docket to establish new and revised telecommunications rules. The proposed rules seek to implement Senate Bill 238 which prohibits slamming and cramming and provides penalties for offenders. The new law goes into effect on July 1, 1999.

Hearing Date: 1:30 p.m. on May 13, 1999, Room 412 of the State Capitol, Pierre, SD

Staff Analyst: All Staff

General Counsel: Rolayne Wiest

Date Docketed: 04/08/99

Written Comments Deadline: 05/24/99

**TELECOMMUNICATIONS**

**TC99-036** In the Matter of the Application of SouthNet TeleComm Services, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

On April 13, 1999, the Commission received an application by SouthNet TeleComm Services, Inc. for a Certificate of Authority to provide telecommunications services in South Dakota. SouthNet TeleComm Services, Inc. proposes to offer the following interexchange services on a resale basis within the State of South Dakota: intraLATA and interLATA switched and dedicated outbound interexchange services, and calling card services accessed via company-provided "800/888" numbers.

Staff Analyst: Bob Knadle

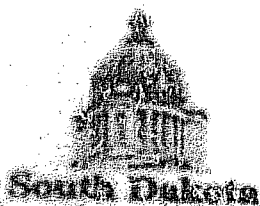
Staff Attorney: Cameron Hoseck

Date Filed: 04/13/99

Intervention Deadline: 04/30/99

You may receive this listing and other PUC publications via our website or via internet e-mail. You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>





# Legislative Research Council

Rep. Kenneth G. McNenny, Chair  
Sen. Arnold M. Brown, Vice Chair

Terry C. Anderson, Director  
Doug Decker, Code Counsel

April 26, 1999

James Burg, Commissioner  
South Dakota Public Utilities Commission  
300 East Capitol Avenue  
Pierre, South Dakota 57501-5070

RECEIVED  
APR 27 1999  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Dear Commissioner Burg:

The Public Utilities Commission has proposed the adoption, repeal, or amendment of rules in 20:10:34:01 to 20:10:34:11, inclusive, regarding the unauthorized changing of telecommunication companies and unauthorized charging of services. We have reviewed the proposed rules, scheduled for hearing on May 13, 1999, and approve the rules for legality, with the following exceptions:

20:10:34:07 -- The last paragraph in this section restates the fine provided in SDCL 49-31-93 and would require an unnecessary amendment if the amount of the fine is changed by the Legislature. This paragraph should either be rewritten or deleted if it does not add any further clarification to the statute.

20:10:34:11 -- The last paragraph in this section restates the fine provided in SDCL 49-31-93 and would require an unnecessary amendment if the amount of the fine is changed by the Legislature. This paragraph should either be rewritten or deleted if it does not add any further clarification to the statute.

This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5 and directions for submitting the final draft of the rules. If you have any questions, please don't hesitate to call me or the staff member who has reviewed your rules.

Sincerely yours,

  
Doug Decker  
Code Counsel

DD:FJB

**PROPOSED RULES:** ARSD 20:10:34:01 to 20:10:34:11, inclusive

**HEARING DATE:** May 13, 1999

When the final draft of the adopted rules is brought to this office for signature for legality and for form and style, please include the following items:

- (1) The edited copy of the first draft;
- (2) One legible copy of the final draft, to be left here. The final draft should be double spaced, contain only rules being amended, repealed, or adopted, and show changes from current printed rules by means of overstrikes and underscores;
- (3) The original form #11 which contains the signature of the officer empowered to adopt the rules or the signatures of a majority of the members of a board or commission which has the rule-making authority;
- (4) Copies of the following:
  - (a) The minutes of the public hearing;
  - (b) The affidavit of mailing to Rules Committee members, if already done.

A copy of the final draft of the rules, together with the minutes of the public hearing, must be mailed to each member of the interim Rules Review Committee at least ten days before the rules are filed with the Secretary of State. Regular mail may be used.

The Legislative Research Council requests that you submit the final draft of the rules for approval by this office at the same time that you send it to the Rules Review Committee members. If you think substantive change may be needed in the final draft, you may send it to us before you send it to the committee.

It should be noted that agencies are responsible for seeing that all documents are completed and signed before the certificate of compliance with Chapter 1-26 and the final draft of the rules are filed with the Secretary of State's Office. Although it is not required by statute, the Secretary of State's Office would like to have a copy of the approval signature sheet with the filing of the final draft and the certificate.


IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive,
- (2) the notice of hearing,
- (3) the fiscal note, and
- (4) all materials incorporated by reference

is hereby admitted at Pierre, South Dakota, this 12<sup>th</sup> day of April, 1999.

  
\_\_\_\_\_  
Legislative Research Council

Public Utilities Commission  
Notice of Public Hearing to Adopt Rules

A public hearing will be held in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on May 13, 1999, at 1:30 p.m., to consider the adoption and amendment of proposed rules numbered

20:10:34:01 to 20:10:34:11, inclusive

The effects of the proposed rules in §§ 20:10:34:01 to 20:10:34:11, inclusive, are to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. The proposed rules state the procedures for changing telecommunications companies and list billing requirements. The proposed rules also state the company's liability for unauthorized changing of telecommunications companies or charging for unauthorized services.

The reasons for the proposed rules are to set new and revised standards and penalties concerning the changing of telecommunications companies and to set new and revised standards and penalties concerning the billing of customers.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must reach the Public Utilities Commission by May 24, 1999, to be considered.

After the hearing, the Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Public Utilities Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3201.

Copies of the proposed rules may be obtained without charge from the

South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address: <http://www.state.sd.us/puc>.



**ADMINISTRATIVE PROCEDURES ACT**  
**FISCAL NOTE**  
*Prepared by Submitting Agency*

	CODE	NAME
DEPARTMENT	13	
DIVISION	139	Department of Commerce Regulation
PROGRAM	1393	Public Utilities Commission
		Fixed Utilities Division

PROPOSED RULE 20.10.31

PROPOSED RULE 20:10:34:01 through 20:10:34:11, inclusive  
Hearing Date May 13, 1999

**FISCAL NOTE SUMMARY:**

**NOTE SUMMARY:**  
List state agencies of local governmental subdivisions affected.

**COST INCREASES (DECREASES)**

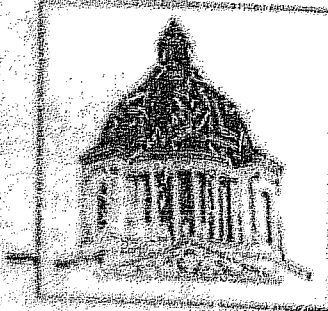
State Agencies	First-Year Impact	Continuous-Yearly Impact
TOTAL	0	0
Local Subdivisions:		
TOTAL	0	0
Revenue Increases (Decreases)		
State & Local:		
TOTAL	0	0

APPROVED

Signature Department Secretary or Board or Commission Chairman

DATE 12-1-68

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used and their source 3) assumptions that were made to arrive at fiscal impact. 4) computations that were made.



# Capitol

## AFFIDAVIT OF

State of South Dakota, County of Hughes

Toni Richardson  
 oath, says: That he/she is the publisher of Capital Journal, a daily newspaper published in the County of Hughes and State of South Dakota; that he/she is the author of the facts herein stated, that said newspaper published within the said County of Hughes on April 19, 1999 the first publication of a legal/display advertisement headed Public Hearing to Adopt a printed copy of which, taken from the said newspaper for one success

April 19, 1999  
 19\_\_\_\_\_  
 19\_\_\_\_\_  
 19\_\_\_\_\_  
 19\_\_\_\_\_

That the full amount of the fee charged for the publication of the attached public notice inures to the sole benefit of the publisher or publishers; that no agreement or understanding for the division thereof has been made with any other person; and that no part thereof has been agreed to be paid to any person whomsoever; that the fees charged for the publication thereof are: \$ 70.88

Subscribed: Toni Richardson

Subscribed and sworn to before me this 26 day of April, 1999  
Mary L. Bane

Notary Public in and for the County of Hughes, South Dakota.  
 My Commission expires 2-19-2003

## PUBLIC UTILITIES NOTICE OF PUBLIC HEARING TO ADOPT RULES

A public hearing will be held in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on May 13, 1999, at 1:30 p.m., to consider the adoption and amendment of proposed rules numbered 20:10:34:01 to 20:10:34:11, inclusive.

The effects of the proposed rules in sections 20:10:34:01 to 20:10:34:11, inclusive, are to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. The proposed rules state the procedure for changing telecommunications companies and list billing requirements. The proposed rules also state the company's liability for unauthorized changing of telecommunications companies or charging for unauthorized services.

The reasons for the proposed rules are to set new and revised standards and penalties concerning the changing of telecommunications companies and to set new and revised standards and penalties concerning the billing of customers.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must reach the Public Utilities Commission by May 24, 1999, to be considered.

After the hearing, the Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Public Utilities Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3201.

Copies of the proposed rules may be obtained without charge from the

South Dakota Public Utilities Commission  
 State Capitol  
 500 East Capitol  
 Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address:  
<http://www.state.sd.us/puc>

# Affidavit of Publication

STATE OF SOUTH DAKOTA

COUNTY OF LAWRENCE

Billy T. Masterson, Jr. of said County and State being first duly sworn, on his oath says: That the BLACK HILLS PIONEER is a legal daily newspaper of general circulation, printed and published in the City of Spearfish, in said County and State by Billy T. Masterson, and has been such a newspaper during the times hereinafter mentioned; and that said newspaper has a bonafide circulation of at least 200 copies weekly, and has been published within said County in the English language for at least one year prior to the first publication of the notice herein mentioned, and is printed in whole or in part in an office maintained at the place of publication; and That I, Billy T. Masterson, Jr., the undersigned, am the Publisher of said newspaper and have personal knowledge of all the facts stated in this affidavit; and that the advertisement headed:

3x5" display advertisement

Notice of Public Hearing

To Adopt Rules

a printed copy of which is hereto attached, was printed and published in said newspaper for 1 successive and consecutive weeks, the first publication being made on the 20th day of April 1999, and the last publication on the 20th day of April 1999, that the full amount of fees charged for publishing same, to-wit: The sum of \$127.88, insures solely to the benefit of the publisher of the BLACK HILLS PIONEER, that no agreement or understanding for a division thereof has been made with any person and that no part thereof has been agreed to be paid to any other person whomsoever.

Subscribed and sworn to before me this 20th day of April, 1999.

Notary Public, Lawrence County, South Dakota  
My commission expires: 10-24-2004

RECEIVED

MAY 06 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

## Public Utilities Notice of Public Hearing

A public hearing will be held in Room 412, fourth floor, at 1:30 p.m., to consider the adoption of

20.10.34.01 to 20.

The effects of the proposed rules in §§ 20.10.34.01 to 20.10.34.02 concerning unauthorized changing of telecommunications company numbers, unauthorized services, the proposed rules relating to companies and list billing requirements. The proposed rules concerning unauthorized changing of telecommunications company numbers.

The reasons for the proposed rules are to set standards and penalties concerning the billing of telecommunications services.

Persons interested in presenting data, opinion, or testimony concerning the proposed rules may do so by appearing in person at the public hearing or by submitting written comments to the South Dakota Public Utilities Commission, State Capitol Building, Room 57501-5070, Material sent by mail must be received by May 24, 1999, to be considered.

After the hearing, the Commission will consider the proposed rules. The Commission may modify or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that the public hearing will be held in a physically accessible place. Please notify the Commission before the public hearing if you have a disability that may require special accommodations to be made. The telephone number for making a request is (605) 773-3333.

Copies of the proposed rules may be obtained from the South Dakota Public Utilities Commission, State Capitol Building, Room 57501-5070.

The proposed rules may also be found on the Internet at the following address: <http://www.state.sd.us/puc>

RM 99-001  
RECEIVED

MAY 12 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION



# MIDCO COMMUNICATIONS

More Services. More Service.

May 11, 1999

Mr. William Bullard, JR,  
Executive Director  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070

RE: Public Hearing to Consider the Adoption and Amendment of Proposed Rules  
Numbered 20:10:34:01 to 20:10:34:11.

Dear Mr. Bullard:

This letter is in response to the Commission's invitation to participate in the Public Hearing, on May 13, 1999, to consider the effects of the proposed rules to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. Midco Communications is strongly opposed to the intentional act of "slamming" as practiced by some telecommunications companies, or by their agents. We welcome rules that give the Commission the power to eliminate this unethical practice in South Dakota.

We are, however, concerned that there appears to be little, or no difference between the intentional act of "slamming" and an accidental or an unintentional unauthorized PIC change. Our specific concern stems from our experience last October when potentially 2,000 McLeod lines could have been PICed to Midco without authorization, due to the complexities of McLeod's common bloc retail Centrex reseller program vs. Midco's wholesale program. While Midco reported the problem immediately to the Commission, worked with McLeod and US West to resolve the problem as quickly as possible, and no unauthorized customers were allowed to use Midco facilities for transmission of phone calls, hence no billing occurred, this event could possibly meet the rest of "slamming" in the proposed rules. We believe the circumstances that led to the October incident have been corrected, however, we remain concerned that there should be a difference between the intentional act of slamming for financial gain and an honest mistake.

We suggest the addition of the word "intentional" or "intentionally" in 20:10:34:07. Please see the enclosed "amendment" to the proposed rule.

Thank you for your consideration in this matter.

Sincerely,

Midco Communications

William Simmons  
Vice President & General Manager

CC: Dave Gerdes  
Mary Lohmes



20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company – Payment of one thousand dollars for unauthorized change – Opportunity for hearing. A telecommunications company which initiates a telecommunications company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which are attributable to telecommunications services from the unauthorized telecommunications company. A telecommunications company which initiates a telecommunications company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period of not to exceed 60 days from the date it is determined that the change was unauthorized.

In addition, the telecommunications company which intentionally initiates a telecommunications company change without proper authorization shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber one thousand dollars for an intentional unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

THE BROOKINGS

# Register

P.O. Box 177 • 312 - 5th St. • Brookings, SD 57006  
605-692-6271 • 800-568-5032 • Fax: 605-692-2979

## Facsimile Transmission

Date 5/12/99

To Delaine

Company \_\_\_\_\_

From Diann

Fax Number 773-

Number of pages 2 (Including cover sheet)

Comments \_\_\_\_\_

Response required... ☐ Yes ☐ No

Hard copy to follow... ☐ Yes ☐ No

State of South Dakota

Exhibit "A"

County of Brookings

RECEIVED

MAY 17 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Christina Julius of said county, first duly sworn, on oath, says: That she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a legal newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," hereto attached and herein mentioned, and was and is printed in the office maintained at said place of publication; and that the

FAX Received MAY 12 1999

I, Christina Julius, Notice of public hearing to adopt rules

A printed copy of which, taken from the paper in which the same was published, is hereto attached marked Exhibit "A," and is made a part of this affidavit, was published in said newspaper for \_\_\_\_\_ times, to-wit:

April 15, 1999

That the full amount of the fee charged for the publication of said Exhibit "A" inures to the sole benefit to the publishers of said newspaper; that no agreement or understanding for the decision thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whatsoever; that the fees charged for the publication thereof are

One hundred nineteen dollars and \$119.00

Christina Julius

Subscribed and sworn to before me this \_\_\_\_\_ 30 day of

April, 1999.

Mary J. H.

Notary Public in and for the County of Brookings, South Dakota.  
My Commission expires January 28, 2005.

## Public Utilities

## Notice of Public Hearing

A public hearing will be held at the South Dakota State Capitol, Pierre, South Dakota, on May 17, 1999, to consider the adoption and amendment of rules numbered:

20:10:34:01 to 20:10:34:11

The effects of the proposed rules, 20:10:34:11, inclusive, are to amend the rules governing the filing of telecommunications company applications for consumers for unauthorized use of telecommunications services, state the procedures for changing rates and list billing requirements, and state the company's liability for telecommunications company services.

The reasons for the proposed revised standards and penalties for telecommunications companies are set forth in the standards and penalties concerning telecommunications companies.

Persons interested in presenting comments for or against the proposed rules should appear in person at the hearing at the South Dakota Public Utilities Commission, Capitol, Pierre, South Dakota. Written comments must reach the Public Utilities Commission by May 14, 1999, to be considered.

After the hearing, the Commission will consider written and oral comments if received. The Commission may modify or amend the rules to include or exclude matters.

Notice is further given to interested parties that a public hearing is being held in a physical hearing room to notify the Public Utilities Commission of the public hearing if you have any comments. Arrangements must be made. If special arrangements is (are) needed, please contact the Commission.

Copies of the proposed rules are available for charge from the...

South Dakota Public Utilities Commission  
State Capitol  
Pierre, SD

The proposed rules may also be viewed on the Commission's home page at the following URL: [state.sd.us/puc](http://state.sd.us/puc).

State of South Dakota

18

Exhibit "A"

County of Brookings

I, Christina Julius, of said county, first duly sworn, on oath, depose that she is the office clerk of THE BROOKINGS REGISTER, a daily newspaper, printed and published in the City of Brookings, in said County of Brookings, and State of South Dakota; that she has full and personal knowledge of the facts herein stated; that said newspaper is a daily newspaper and has a bona fide circulation of at least two hundred copies of each issue daily; that said newspaper has been published within the said County of Brookings, and State of South Dakota, for more than one year prior to the first publication of Exhibit "A," herein this most truly sworn mentioned, and was sent to printed in the office mentioned at said place of publication; and that she

Page 1 Notice of public hearing to adopt rules

A printed copy of which, taken from the paper in which the notice was published, is hereto attached marked Exhibit "A," and is made a part of this affidavit, was published in said newspaper for

1 times, to-wit:

First at 1999

That the full amount of the fee charged for the publication of said Exhibit "A" herein to the said broker to the publisher of said newspaper; that no agreement or understanding for the above amount has been made with any other person, and that no part thereof has been used to be paid to any person whatsoever; that the fees charged for the publication thereof are

One hundred dollars (\$100.00) and \$112.00

Christina Julius

Subscribed and sworn to before me this

30 day of

1999

Mary Schulte

Notary Public in and for the County of Brookings, South Dakota.  
My commission expires January 28, 2000.

# Public Utilities Commission Notice of Public Hearing to Adopt Rules

A public hearing will be held in Room 412, fourth floor, State Capitol, Pierre, South Dakota, on May 13, 1999, at 1:30 p.m., to consider the adoption and amendment of proposed rules numbered:

**20:10:34:01 to 20:10:34:11, inclusive**

The effects of the proposed rules in §§ 20:10:34:01 to 20:10:34:11, inclusive, are to prohibit the unauthorized changing of telecommunications companies and to prohibit charging consumers for unauthorized services. The proposed rules state the procedures for changing telecommunications companies and list billing requirements. The proposed rules also state the company's liability for unauthorized changing of telecommunications companies or charging for unauthorized services.

The reasons for the proposed rules are to set new and revised standards and penalties concerning the changing of telecommunications companies and to set new and revised standards and penalties concerning the billing of customers.

Persons interested in presenting facts, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must reach the Public Utilities Commission by May 24, 1999, to be considered.

After the hearing, the Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Public Utilities Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3201.

Copies of the proposed rules may be obtained without charge from the...

South Dakota Public Utilities Commission  
State Capitol • 500 East Capitol  
Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address: <http://www.state.sd.us/puc>.



FAX: 605 773 3009



RM 99-001

## SOUTH DAKOTA STATE LEGISLATIVE COMMITTEE

Chair  
 George Smith  
 107 B. 5th Street  
 Pierre, SD 57501-5070  
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 1620 South 6th Ave.  
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CAPITAL CITY TASK FORCE  
 COORDINATOR  
 Wyland Borth, CCTF Coordinator  
 102 Lakewood Drive  
 Pierre, SD 57501-2209  
 (605) 224-5194

May 20, 1999

Jim Burg, Chairman  
 SD Public Utilitien Commission  
 Capitol Building  
 500 East Capitol Avenue  
 Pierre, SD 57501-5070

RE: Proposed Telecommunications Service Standards  
 Proposed Rules for SB 238 Slamming/Cramming Bill

Dear Commissioner Burg:

On behalf of our 79,000 South Dakota members, the South Dakota State Legislative Committee of the American Association of Retired Persons strongly supports the proposed rules for SB 238 Slamming/Cramming Bill.

Generally, we are in favor of this important piece of consumer legislation. Slamming and cramming are two of the most frequent problems cited by telephone consumers and are the two issues that consumers complain about most. Furthermore, such practices inhibit functioning competition to develop. We applaud our state's effort in dealing with this deceptive telecommunications marketing practice.

AARP does feel the proposed rules have two significant shortcomings:

1. Federal and state policymakers should impose substantial penalties on carriers that engage in slamming, cramming, and other deceptive practices; however, we feel that the suggested penalty of \$1000 to victims of slamming/cramming does not hurt enough to be a deterrent. In fact, our preference would be the federal legislation which almost passed last year. This legislation exacts a penalty of \$40,000 for the first incident and \$150,000 for the second incident. Money could then be directed toward consumer assistance and consumer complaints.

2. Secondly, we are concerned about what provisions are being made to alert the victims. We are particularly concerned about the elderly population who often are not aware of penalties for deceptive practices.

Again, we would like to thank you for your interest in the concerns of South Dakota and for your consideration of these concerns.

Sincerely,



Robert C. Vogt  
Chair, State Legislative Committee  
South Dakota AARP



Donald Low  
Senior Attorney

State Regulatory Affairs/Mountain Region  
8140 Ward Parkway  
Kansas City, MO 64114  
Voice 913 624 6865  
Fax 913 624 5681  
don.a.low@mail.sprint.com

May 20, 1999

**RECEIVED**

MAY 21 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

VIA FEDERAL EXPRESS

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue, State Capitol  
Pierre, SD 57501

Re: In the Matter of the Establishment of Revised Telecommunications Rules  
Docket No. RM 99-001

Dear Mr. Bullard:

Enclosed for filing, are the original and ten copies of Sprint's Comments in the referenced docket. Please return one file-stamped copy in the enclosed envelope.

Thank you for your assistance. Please call me if you have any questions.

Very truly yours,

Donald A. Low

DAL:kmn  
Enclosures

cc: Thomas Harmon

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF SOUTH DAKOTA

In the Matter of the Establishment  
of Revised Telecommunications Rules )

Dkt. No. RM 99-001

Sprint's Comments

Sprint Communications Company L.P., ("Sprint") appreciates the opportunity to comment on the proposed revisions to the Commission's telecommunications rules regarding slamming and cramming. Sprint's comments are as follows:

1. 20:10:34:07. Sprint recognizes that these revisions to the Commission rules are necessitated by the passage of SB 238 and that the Commission's discretion in implementing the bill is limited. Sprint is nonetheless concerned about the absolute absolution of customer liability for services rendered, as reflected in 20:10:34:07. Sprint agrees with the Federal Communications Commission's decision to limit that absolution period to 30 days.

We agree that restricting the period of time for which the consumer is absolved of charges not only limits opportunities for consumers to take possible unfair advantage of carriers, but also provides incentive for consumers to review their bills carefully and promptly. We limit the absolution period to 30 days after an unauthorized change has occurred.

Sprint would consequently urge the Commission to adopt similar limitations in its rules if it believes the Commission has such discretion under the law.

Sprint also suggests that the proposed modification to this rule runs afoul of §258(b) of the Telecommunications Act of 1996. As the FCC noted in adopting the rule absolving slammed customers of liability for unpaid charges for thirty days,<sup>2</sup> that section of the Act specifies carrier

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In the Matter of Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance  
Carriers, FCC 98-314, CC Docket No. 94-129 (Dec. 23, 1998), ¶ 23.

The part of the FCC rules dealing with treatment of customer payments and carrier compensation have reportedly been stayed. Sprint believes that the third party administrator system proposed to the FCC would be a far simpler and more efficient means of dealing with the slamming issues and hopes that the PUC would consider supporting it.



obligations when the subscriber has paid the unauthorized carrier. Neither the FCC nor states may adopt inconsistent remedies.

2. 20:10:34:07 & 20:10:34:11. Sprint agrees with the concerns expressed at the hearing on this matter regarding the payment of \$1,000 to the subscriber if the unauthorized change in providers or the unauthorized billing of services is the result of an data entry error or other unintentional mistake. Although such accidents are regrettable, the legislature surely could not have intended to provide a \$1,000 windfall to the customer in addition to the absolution of payment liability for services in such circumstances. Sprint therefore agrees with the modification suggested by Midco Communications to require the payment of \$1,000 only if the unauthorized change is intentional. In addition, a similar modification should be made to the cramming rule.

20:10:34:11 . . .

In addition, the telecommunications company which intentionally initiates unauthorized billing shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the commission . . . .

3. 20:10:34:10.01. Sprint interprets this cramming rule to not require any specific form of documentation of authorization for billing of a service. Although this issue was the topic of some discussion during the May 13<sup>th</sup> public hearing, Sprint does not believe that further specificity is either desirable or necessary. The kind of documentation showing customer authorization of services will vary with the service and the internal processes of each company. Each company should have the discretion to modify those processes as necessary to comply with this rule.


4. 20:10:34:10. Sprint supports the proposed changes to this rule that clarifies that the subject matter of the rule is notification of rate increases. However, Sprint suggests that the Commission also clarify the kind of notice of rate increases required. The current rule could be interpreted to require individual notice to subscribers of any change that results in an increase in rates. Sprint would suggest that publication notice should be sufficient to appraise customers of an increase in rates and that the

appropriate and should be made.

Dated: May 20, 1999

Respectfully submitted,

Sprint Communications Company L.P.



---

Donald A. Low

Sprint

8140 Ward Parkway - 5E

Kansas City, MO 64114

(913) 624-6865

FAX 624-5681

Richard Tieszen

Thomas Harmon

Tieszen Law Office

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Pierre, SD 57501-0626

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FAX 224-1600

company should have discretion to provide whatever kind of notice most efficient. In many cases a change in the rate structure of a long distance service could have varying impacts. For example, a decrease or elimination of a per-call surcharge may be combined with an increase in the per-minute rate so that customers may see either an increase or decrease in their bills, depending on the length of their calls. In such cases, the additional expense of providing individual notice to customers is unwarranted. Sprint suggests the following modification:

20:10:34:10. Notification of increase in rates. Prior to changing any rate, term or condition of service, a telecommunications company shall notify the subscriber by bill insert or message, newspaper publication or similar means of the change if it results in an increase in rates.

IN CONCL



May 21, 1999

RECEIVED

MAY 24 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. William Bullard, Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

*Via Overnight Delivery*

Re: DPUC Regulations Re: Telephone Slamming - Docket No. RM99-0001

Dear Mr. Bullard:

In connection with the above-captioned proceeding, enclosed you will find one (1) original and ten (10) copies of the Comments of Billing Concepts, Inc.

Should you have any questions or comments regarding this matter, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Donald R. Philbin, Jr.'.

Donald R. Philbin, Jr.  
Vice President and  
Associate General Counsel

DRPjr:am  
Enclosures.



RECEIVED

MAY 24 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Before the  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

PUC PROMULGATION OF  
REGULATIONS CONCERNING  
TELEPHONE SLAMMING  
AND CRAMMING

)  
)  
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Docket No. RM99-0001

COMMENTS OF BILLING CONCEPTS, INC.

Billing Concepts, Inc. ("BCI") respectfully submits these comments on the South Dakota Public Utility Commission's ("PUC") notice of rulemaking on slamming. BCI applauds the efforts of the PUC and those efforts under way on the federal, state and industry levels to address the issue of slamming. BCI is a publicly traded billing clearinghouse that has been very active in addressing slamming. BCI has worked with a number of PUCs on this issue and will continue to do so.

Billing clearinghouses consolidate charges from a variety of competitive communications providers and contract with local phone companies for those charges to appear on consumers' monthly bills. In essence, clearinghouses are middlemen between these smaller service providers and the local telephone companies. These services benefit consumers because studies have shown that consumers prefer a single bill for all of their communications services. Without billing clearinghouses, very few competitive service providers would have efficient and affordable access to a consolidated telephone bill, and competition would flounder.

Billing clearinghouses also play an important role in keeping unauthorized charges from ending up on consumers' monthly phone bills. That is why the major clearinghouses recently banded together to form the Coalition to Ensure Responsible Billing and to construct tough Standards of Practice. BCI's president currently serves as president of the Coalition. A copy of the Coalition Standards is attached. Briefly, the Standards require clearinghouses to adhere to six

broad commitments. They must first, pre-screen providers and services; second, monitor providers and programs; third, require service providers to use specific methods to verify orders; fourth, offer consumer friendly bills; fifth, supply helpful information to consumers who have complaints; and finally, make available to consumers a broad range of data about cramming.

Our experience teaches us that the best place to confront and control slamming is often at the telemarketing level. Most telemarketing seems to be done by third-party organizations that are not directly controlled by the actual service provider. The telemarketing company may make contractual representations to the carrier, but by the time slamming is revealed, a breach of contract claim may not be an effective remedy against a rogue group of telemarketers.

Telemarketers, unlike downstream, limited service providers, have first-hand contact with prospective end users and the best opportunity to obtain a valid authorization. Rules designed for interexchange carriers may not effectively reach the independent telemarketer. The end user authorization received by the telemarketer is critical to the entire process, and it is at that early point that the majority of complaints could be alleviated. A properly trained and supervised telemarketer can provide a good service to a knowing consumer and authorize billing of that communications service on the customer's phone bill in an efficient manner. A rogue telemarketer can create problems for everyone involved, including service providers, billing clearinghouses, local exchange companies, consumers and regulators. Connecticut recently proposed rules that would address the telemarketing aspect of this process.

It is our view that the individual telemarketer should be properly trained and that some entity should certify that the telemarketer has completed training and will observe certain minimum standards. That certificate could be revoked for violations of the standards. Such individual responsibility would prevent an individual telemarketer from violating one company's

practice only to end up at another telemarketing company after being discovered at the previous company's operation.

Federal regulators, the local exchange companies and the billing clearinghouses have taken initiatives to control slamming. To BCI's knowledge, the telemarketers have not undertaken similar efforts. Yet, it is the telemarketers who are in the best position to use properly trained employees to obtain proper authorization to place legitimate charges on customers' phone bills. That important link in the billing chain should be addressed so legitimate providers will continue to be able to efficiently bill properly authorized communications services to phone bills. In light of recent challenges to some slamming rules with similar provisions, an increased focus on this component of the process would be productive.

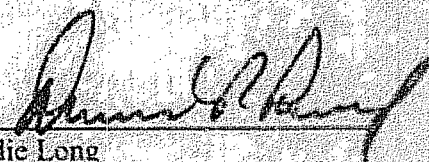
A number of slamming initiatives are being proposed by regulators, lawmakers and industry participants. Even while these measures are pending, BCI has noticed a precipitous drop in slamming complaints. BCI attributes a lot of that success to efforts made here at BCI and through the Coalition to address the issue. It may be prudent for the Commission to give measures that are already in place time to bear fruit before more rules and regulations are added.

### CONCLUSION

BCI believes that significant steps have been taken by industry groups and lawmakers to address the problem of slamming. Those efforts, and the increased awareness generated by them, are beginning to result in precipitous declines in the number slamming complaints. We expect the decline to continue, even without additional rulemaking. If the Commission deems further rulemaking to be necessary at this time, BCI suggests that the telemarketing aspect of the process be examined. A properly trained and supervised telemarketer can provide a good or service to a knowing consumer and authorize billing of that communication service on the customer's phone

bill in an efficient manner. A rouge telemarketer can create problems ~ everyone involved, including service providers, billing clearinghouses, local exchange companies, consumers and regulators.

Respectfully submitted,



W. Audie Long  
Texas State Bar No. 12532000  
Donald R. Philbin, Jr.  
Texas State Bar No. 15908800  
Billing Concepts, Inc.  
7411 John Smith Drive  
San Antonio, Texas 78229  
(210) 949-7022 (Telephone)  
(210) 949-7024 (Facsimile)



## **ANTI-CRAMMING CONSUMER PROTECTION STANDARDS OF PRACTICE OF THE COALITION TO ENSURE RESPONSIBLE BILLING ("CERB")**

**Cramming is the addition of charges to a telephone bill for programs, products or services the consumer did not knowingly authorize.**

In order to protect consumers from unauthorized, deceptive or ambiguous charges on their telephone bills, signatories hereto adopt and agree to be bound by the following Anti-Cramming Consumer Protection Standards of Practice.

### **• PRE-SCREENING OF PROVIDERS AND SERVICES**

Signatories commit to pre-screening all prospective service providers and the programs, products and services they offer.

#### **• SCREENING OF PROVIDERS**

Signatories will require as a precondition for any business relationships the following information:

- Service provider company name and address.
- Names of officers and principals of the company.
- Proof of corporate or partnership status.
- Copies of certifications as required.
- Foreign corporation filings as required.
- Any information regarding whether the company, its affiliates and/or its officers or principals have been subject to prior conviction for fraud or have had billing services terminated.
- That any tariffs be made available on request.
- The names of any telemarketing companies to be used by the service provider.
- The names of any third party verification companies to be used by the service provider.

#### **• SCREENING OF PROGRAMS, PRODUCTS AND SERVICES**

Signatories will require the following information:

- Marketing materials.
- Advertisements (print or other media).
- Applicable fulfillment package (which must include cancellation information if not included elsewhere and a toll free customer service telephone number).
- Scripts for both sales and validation.
- Honest, clear, and understandable text phrase for telephone bill.

Signatories will not knowingly provide billing for service employing the following practices:

- Box, sweepstakes, or contest - type entry forms.
- Negative option sales offers.
- 800 pay per call.
- Collect callback.
- Phantom billing (charging for calls never made or services never provided).
- Such other programs, products or services Signatories Determine to be deceptive or anti-consumer.

Each Signatory will maintain an internal standards committee to review the information collected for both providers and programs. Members of these committees will have no vested sales interest in the acceptance of a service, product or program.

#### ● COMPLIANCE MONITORING

In order to better police the business practices of its service providers and to assure the efficiency of its screening procedures, Signatories commit to engage in active monitoring of providers and programs. Signatories will:

- Monitor consumer inquiries.
- Monitor consumer complaints to government agencies.
- Monitor escalated complaints to the local exchange carrier.
- Maintain up-to-date records regarding complaints and inquiries.
- Adopt action plans to respond to complaints and inquiries.
- Notify service providers of complaints or inquiries.
- Coordinate investigations with service providers.
- Each Signatory shall take such disciplinary action as each determines is appropriate under the circumstances.

#### ● MANDATORY AUTHORIZATION

It is critical that consumers can depend upon their authorization for the service, product or program for which they will be billed. Signatories will require service providers to employ one of the following forms of authorization:

- Independent Third Party Verification, or
- Written Letter of Authorization or Sales Order, or
- Voice recording of telephone sales authorization.

A valid authorization must include:

- The date.
- The name, address and telephone number of the consumer.
- Assurance that the consumer is qualified to authorize billing.
- A description of the product or service.
- A description of the applicable charges.
- An explicit consumer acknowledgment that the charges for the product or service will appear on the telephone bill.
- The acceptance by the consumer of the offer.

## ● CONSUMER-FRIENDLY BILLING PRACTICES

Central to a consumer's right to ensure that they have not been crammed is the ability to understand and read the telephone bill. Signatories agree that informed consumers can better protect themselves from unauthorized products or services. Signatories will support providing consumers a bill that can be easily understood.

Consumer bills should include:

- A clear identification of the billing entity
- A clear identification of the service provider.
- A clear description of products or services.
- A clear identification of the charges.
- The toll free telephone number that subscribers may call to make inquiries concerning the billing.

## ● CONSUMER SATISFACTION

Consumers must be able to easily and quickly discuss problems. Signatories are committed to monitoring consumer satisfaction particularly with regard to any disputes or inquiries that may arise. Signatories will provide quick and thorough responses.

Signatories shall provide on request:

- The name, address, phone number and fax number of the service provider.
- The nature of any charge.
- The method of authorization.
- Information as to how a consumer may cancel a service or product.

In addition, in order to facilitate resolution of disputes. Signatories will:

- Provide a toll free customer service number.
- Provide dedicated staff to respond to consumer inquiries.
- Provide a full and timely investigation of any dispute.
- Initiate a credit or respond to the consumer within 30 days of the consumer's dispute.
- Not rebill on a local exchange carrier telephone bill charges previously credited.

## ● DISCLOSURE

Signatories will share with each other and, upon request, with federal and state enforcement agencies:

- Identifying information with respect to terminated service providers and programs.
- A description of specific practices relating to cramming that the Signatories have encountered, and the steps being taken by the Signatories to correct them.
- Aggregate data with regard to complaints filed with federal and state government authorities received by Signatories.

On October 1, 1998, a copy of these Standards of Practice and a list of all Signatories will be sent to the Federal Communications Commission, the Federal Trade Commission and all state Public Utility and Service Commissions and each state Attorney General.

Signatories:

Federal Transtel	OAN Services	Billing Concepts
HBS Billing Services	ILD Teleservices	Integretel
National Billing Exchange	Olympic Telecommunications	USP&C

*The Coalition to Ensure Responsible Billing was formed by the United States' leading billing clearinghouses in an effort to combat consumer fraud on the local telephone bill.*

*For more information contact:*

*Jacqueline Mitchell, Billing Concepts: 210-949-7000  
Ronald F. Evans, OAN Services: 818-678-4730  
Tony Center, FIT: 800-382-8669*



# SDITC

RM 99-001  
South Dakota Independent  
Telephone Coalition, Inc.

Richard D. Cude  
Executive Director  
rsdite@sd.cybernet.net

May 24, 1999

Bill Bullard, Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol  
Pierre, South Dakota 57501

RECEIVED

MAY 24 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: Proposed Slamming and Cramming Rules

Dear Bill:

SDITC submits this letter on behalf of its member LECs in response to the Commission "Notice of Hearing to Adopt Rules" regarding the proposed amendment of administrative rules, §§ 20:10:34:01 to 20:10:34:11, inclusive. This Notice permits the filing of written comments on the administrative rule proposals by May 24, 1999. SDITC files these comments to briefly supplement its comments presented during the public hearing held on May 13, 1999.

As indicated at the hearing, SDITC believes that additional language is necessary to clarify those rules which refer to the telecommunications company carrier that "initiates" or has "initiated" an unauthorized pre-subscribed carrier change or an unauthorized billing of products or services (ARSD §§ 20:10:34:05, 20:10:34:07, 20:10:34:10.01 and 20:10:34:11).

We believe that clarification of these rules is especially important given the liability provisions contained in both the proposed administrative rules and Senate Bill 238. The rules should leave customers with a clear understanding of which company is deemed legally responsible for any unauthorized carrier change or unauthorized billing. The intent of the word "initiates," as used in the new state legislation and the administrative rules related to "slamming," is to make a distinction between the company that submits a carrier change (generally the company marketing or providing the telecommunications service) and the company that merely executes or puts into effect a carrier change. Similarly, the intent of the "initiates" language as it relates to "cramming," was to ensure that liabilities for cramming are imposed on the proper company (generally the company that is actually selling the service and which has "submitted" new charges for billing).

We believe the rules would be improved by adding language which, in effect, incorporates the distinction between "submitting" and "executing" carriers as it is established in the FCC rules, specifically, 47 Code of Federal Regulations ("CFR") § 64.1100.

Accordingly, we would propose the following revisions:

- Revise ARSD § 20:10:34:05 by adding the following sentence as a new paragraph after the first paragraph:



The telecommunications company that initiated the change, a subscriber's pre-subscribed telecommunications company for purposes of this Section and ARSD § 20:10:34:07 is the "submitting carrier" as defined by 47 Code of Federal Regulations § 64.1100(d)(3)(1).

- Revise ARSD § 20:10:34:10.01 by adding the following sentence as a new paragraph after the first paragraph:

For purposes of this Section and ARSD § 20:10:34:11, the telecommunications company that initiated the billing is generally any telecommunications carrier that (A) requests billing for products or services on behalf of an end user subscriber, and (B) seeks to provide retail products or services to the end user subscriber.

SDITC is also concerned with ARSD § 20:10:34:10.01, which addresses cramming, in another respect. The rule states that "the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized." This general "documentation" requirement will be subject to varied interpretations and we are concerned that it not be interpreted to require, in all cases, written authorization from subscribers prior to the delivery of any new or different service. SDITC would agree that further protections may be needed to prevent cramming on customer bill's. The steps taken for this purpose, however, should not prevent consumers from promptly receiving telecommunications services. The term "documentation" should not be interpreted to require steps that will impose too much inconvenience on customers or slow the delivery of service in response to customer needs.

Lastly, SDITC would raise a concern similar to that expressed in the written comments filed by Midea Communications. The proposed rules, which we recognize are based on Senate Bill 238, contain a one thousand dollar (\$1,000) penalty that may be applied in any situation where a subscriber's pre-subscribed carrier is changed without authorization or where a subscriber is billed for products or services without authorization. No provisions are incorporated into the proposed rules indicating that different treatment would be extended between cases involving willful or reckless conduct on the part of a telecommunications company and cases where the slamming or cramming is merely the result of an innocent mistake by a telecommunications company. The lack of any provisions limiting application of the penalty to proper circumstances is troublesome. The \$1,000 penalty is established as a punitive type penalty. In most cases, the \$1,000 amount would far exceed any actual damages suffered by a slammed or crammed subscriber. Yet, the penalty may be applied in all cases without regard to whether the company involved is acting with wrongful intent or in a reckless manner. This, we believe, leaves the penalty provisions flawed and subject to legal challenge.

In closing, we thank the Commission for this opportunity to submit written comment.

Sincerely,



Richard D. Colt  
Executive Director and  
General Counsel

cc: SDITC Member LECs

LAW OFFICES  
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JOHN S. LOVALD  
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LEE C. "KIT" McCAHREN  
WADY A. REINERS

TELEPHONE 224-9811  
AREA CODE 605  
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May 24, 1999

RECEIVED

MAY 24 1999

*Via Hand Delivery*

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. Bill Bullard  
Executive Director  
SD Public Service Commission  
500 East Capital Avenue  
Pierre, SD 57501

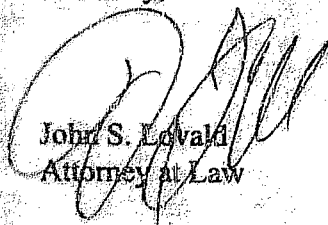
Re: Establishment of New and Revised Telecommunications Rules  
Docket No. RM99-001

Dear Mr. Bullard:

Enclosed for filing in the above referenced matter are an original and ten copies of  
AT&T Communications of the Midwest Inc.'s Comments.

Please feel free to call me if there are any questions.

Sincerely,



John S. Lovald  
Attorney at Law

Enclosures

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

MAY 24 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT OF )  
NEW AND REVISED TELECOMMUNICATIONS ) Docket No. RM99-001  
RULES )

---

COMMENTS OF AT&T

---

AT&T Communications of the Midwest, Inc. ("AT&T") hereby submits its comments on the South Dakota Public Utilities Commission's ("Commission's") proposed revisions to Chapter 20:10:34 of the South Dakota Administrative Rules, that addresses Prohibition Against the Unauthorized Changing of Telecommunications Company and Charging for Unauthorized Services. AT&T, as is the Commission, is extremely concerned about the practice of changing a customer's carrier without authorization, known as slamming. On March 3, 1998, AT&T's Chairman, Mike Armstrong implemented a "Zero Tolerance" policy on slamming. A copy of the press release outlining the "Zero Tolerance" policy is attached to these comments as Exhibit A. The challenge in dealing with the issue of slamming is striking a balance between the protection of customers and authorized carriers and the imposition of overly burdensome rules on legitimate carriers and customers. Given that similar rules exist and are under consideration on the federal level, AT&T proposes that the Commission attempt to ensure consistency between protections afforded by the state and federal rules. Therefore, AT&T recommends revision of several rules and clarification of others.



## **I. AUTHORIZATION METHODS**

In South Dakota telecommunications companies must incorporate one of the three authorization methods listed in proposed rule 20:10:34:02:01 into their processes for implementing changes in subscribers' designated interexchange or local exchange carriers and services. The confirmation of a subscriber's change in carrier is permitted through receipt of written authorization, by use of an independent third-party verification company, or by electronic authorization.

Two of these three authorization methods, written and electronic authorization, are consistent with the Federal Communications Commission's ("FCC") new slamming rules that went into effect on April 27, 1999. Although the use of an independent third-party verification ("TPV") company is also an allowable authorization method permitted by the FCC, this Commission's comparable use of TPV as a method of authorization is burdened with the extra constraint of "electronically record[ing] the telephone call that confirms the subscriber's change of a designated telecommunications company."<sup>1</sup>

"Electronically recording" is not defined in the rules and may mean some form of "audio recording."

In its Order, released on December 23, 1998, the FCC expressly requires that states accept the same verification procedures it specifies in its new rules:

We conclude that, although a state must accept the same verification procedures as prescribed by the Commission, a state may accept additional verification procedures for changes necessary to intrastate service if such state concludes that such action is necessary based on its local experiences.<sup>2</sup>

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<sup>1</sup> SB 238, Section 2.

<sup>2</sup> Before the Federal Communications Commission, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket 94-129, Second Report and Order and Further Notice of Proposed Rulemaking ("Second Report and Order and FNPRM"), Released December 23, 1998; ¶ 87.

The FCC goes on to add:

States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as Section 258. . . . Furthermore, we are obligated and willing to examine state rules on a case-by-case basis if it appears that they conflict with the purpose of our rules, for instance, by prohibiting or having the effect of prohibiting the ability of any entity to provide telecommunications service.<sup>3</sup>

As written, the South Dakota third-verification rule that requires the TPV company to electronically record the telephone call that confirms the subscriber's change of a designated telecommunications company conflicts with the federal rule regarding third-party verification. AT&T believes that the difference between this South Dakota rule and the federal rule would cause the state rule to be preempted by the federal rule.<sup>4</sup> In addition, the proposed rule's verification method is very expensive and because of the expense, may have the effect of prohibiting carriers from providing telecommunications services to South Dakota consumers.

In this instance, the FCC permits states to add verification options, but precludes them from narrowing those that it has ordered be made available to carriers.

In other words, absent a specific preemption determination, a state may provide carriers with *further options* for verifying carrier changes to intrastate service, *in addition to* the Commission's three verification options, if the state feels that such procedures would promote consumer protections and/or competition in that state's particular region.<sup>5</sup>

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<sup>3</sup> *Id.* at ¶ 89.

<sup>4</sup> The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme Law of the Land. Furthermore, federal agency regulations have the effect of federal law for purposes of determining whether a state law is inconsistent. In fact, the United States Supreme Court has held that, where preemption is not express in the law, preemption occurs when: (1) it is impossible to comply with state and federal law simultaneously; or (2) when the state law obstructs or compromises an important federal objective.

<sup>5</sup> Second Report and Order and FNPRM at ¶ 88 (emphasis added).

Thus, the FCC envisions states adding additional options not restricting one of the three mandatory options. The proposed rule restricts one of the three options. To avoid this conflict with the federal rules, AT&T recommends that the Commission simply add another verification method to its rules to include TPV as envisioned by the FCC.

AT&T understands that the Commission is carrying out the South Dakota Legislature's intent by requiring electronic verification. However, the South Dakota Legislature gave the Commission authority to provide verification methods in addition to those expressly provided in its statute when it said:

The telecommunications service subscriber's authorization shall be evidenced either by a written authorization signed by the subscriber or by the use of an independent third-party verification company which complies with the provisions of sections 2 and 3 of this Act, or by any other means authorized by the commission.<sup>6</sup>

Accordingly, AT&T requests that the Commission add a fourth verification option that is consistent with the third-party verification authorization method found in the FCC's new rules.<sup>7</sup> This addition would eliminate the inconsistency with the federal rules and is allowed by SDCL § 49-31-90.

## **II. APPROXIMATE AMOUNT OF CHANGE CHARGE TO BE SPECIFIED IN THE LETTER OF AGENCY (LOA)**

Rule 20:10:34:03(6) requires that carriers specify in each LOA the approximate charge that subscribers may incur when they change their

<sup>6</sup> South Dakota SB 238, Section 1 (emphasis added)

<sup>7</sup> *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distances Carrier*, FCC 98-334, CC Docket No. 94-129, Appendix A., FCC Part 64, Subpart K, 64.1150(c), Released Dec. 23, 1998.

interexchange or local exchange service company. AT&T requests that the Commission remove this requirement from its rule.

Mandating that carriers include the change charge amount on each LOA requires customization of LOAs that are used regionally or nation-wide. Such customization adds to telecommunication companies' expense of doing business in South Dakota. Such additional costs are eventually borne by the consumers of South Dakota.

Moreover, no harm is done to consumers if the Commission eliminates this requirement. Subscribers will already be alerted to the fact that they may be assessed a charge to change their carrier. If the subscriber desires to know the specific charge that may be assessed, he or she can call the prospective telecommunications company and find out what the charge is. Requiring telecommunications companies to provide a toll-free number in their LOAs (20:10:34:03(9)) further negates the need to include the specific change charge. If customers have questions about the change charge, or would like additional information about the offer, they may call the prospective carrier on the toll-free number that is provided in the LOA.

### **III. COMPLAINTS OF UNAUTHORIZED CHANGING OF A TELECOMMUNICATIONS COMPANY**

Rule 20:10:34:05 states in part:

Upon receipt of an oral or written complaint alleging an unauthorized change of a subscriber's telecommunications company from the subscriber, the subscriber's original presubscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall provide documentation, within 30 days and without cost, showing that the



change was authorized. If a telecommunications company fails to provide the documentation, the change of the telecommunications company is considered invalid.

AT&T is uncertain from reading this rule to whom the accused carrier should provide the documentation showing that a change was authorized. The implication is that the documentation should be provided to the subscriber. AT&T requests that the Commission clarify this rule by explicitly stating to whom the documentation should be sent.

#### **IV. REFUND OR CREDIT OF CHARGES BILLED BY AN UNAUTHORIZED TELECOMMUNICATIONS COMPANY**

Rule 20:10:34:07 states in part:

A telecommunications company which initiates a telecommunications company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which are attributable to telecommunications services from the unauthorized telecommunications company.

This rule does not cap the period that a customer may be absolved from paying for telecommunications services provided by an unauthorized telecommunications company.<sup>8</sup> The FCC's slamming Order directly addressed this issue and provides a sound basis for limiting the length of time that a customer receives free service.

The FCC's rules direct that the subscriber be absolved from paying charges assessed by unauthorized carriers for 30 days after an unauthorized change has occurred. In determining the 30-day limitation the FCC stated:

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<sup>8</sup>As written, this rule is inconsistent with the liability portion of the new FCC rules that were scheduled to go into effect on May 18, 1999. Although the U S Court of Appeals for the District of Columbia temporarily stayed the rules, AT&T recommends that the Commission consider the FCC's rules as a guidepost to the FCC's intent and the federal objectives. The primary issue before the Court and the FCC is the need for an independent third party administrator to provide

We also choose to absolve consumers of liability for a limited time because it provides some compensation to consumers for the time, effort, and frustration they experience as a result of being slammed, as well as for the loss of choice and privacy.<sup>9</sup> (emphasis added)

The FCC goes on to state:

This rule also makes slamming unprofitable because it provides consumers with incentive to scrutinize their monthly telephone bills early and carefully. By encouraging consumers to police their own telephone bills, this rule enlists the public's help in detecting occurrences of slamming.<sup>10</sup>

Thus, some time for absolution is appropriate to compensate customers for the negative effects of slamming. AT&T has voluntarily taken several measures to provide its customers additional protection. After a customer selects AT&T as its preferred carrier, AT&T sends the customer an information letter that verifies the service selected. Additionally, the same letter educates the customer about how to protect his or her choice of carriers and provides the toll-free number of AT&T's Slamming Resolution Center for the customer's use if the customer believes the switch was made in error. A copy of this information letter is attached to these comments as Exhibit B.

Another protection that AT&T provides is branding calls traveling on its network. If a customer has not subscribed to AT&T and hears the AT&T branding, he or she is alerted that a change has been made. Likewise, if an AT&T customer does not hear the branding, he or she is alerted that it is likely that he or she has been switched away from AT&T. In these ways, customer education and vigilance plays a key role in eliminating the problem of slamming.

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the mechanism for enforcement of the FCC's rules. Thus, the rules themselves have not lost their capacity to educate simply because of the stay.

<sup>9</sup> Second Report and Order and FNPRM, ¶21.

<sup>10</sup> *Id.* at ¶20.

The unlimited absolution period proposed in Rule 20:10:34:07, run contrary to enlisting the aid of customers and in fact, encourages them not to report slamming incidents for as long as possible. Limited absolution compensates customers for their inconvenience while at the same time enlisting customer assistance in combating the problem of slamming. As written, Rule 20:10:34:07 discourages customers from reporting these incidents early because to do so would only decrease the time that the customers would receive free service.

Furthermore, if the customers have incentive to delay reporting an unauthorized change, the unauthorized carrier's ability to continue its wrongful conduct is prolonged. In this process, the authorized company has also lost a valued customer.

The FCC recognized the possibility of consumer fraud resulting from an unlimited absolution period. In its Further Notice and Order<sup>11</sup>, the FCC asked commenters to consider if subscribers were to be absolved of liability for unpaid charges, whether it should limit the time during which subscribers would not be liable for charges, and what the time frame should be. The Order stated,

Commenters state that if consumers are to be absolved of liability for charges incurred after being slammed, it should be for only a limited time. We agree that restricting the period of time for which the consumer is absolved of charges not only limits opportunities for consumers to take possible unfair advantage of carriers, but also provides incentive for consumers to review their bills carefully and promptly. We limit the absolution period to 30 days after an unauthorized change has occurred.<sup>12</sup>

The FCC's objective was to balance the need to protect consumers against the need to prevent consumers from taking unfair advantage of carriers. AT&T asks the

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<sup>11</sup> *Id.*, see *infra* discussion in Investigation and Reimbursement Procedures, § III. 3.

<sup>12</sup> Second Report and Order and FNPRM, ¶ 23.

Commission to add a time limit for free service in this rule. Setting parameters around the absolution period, such as 30 days, would strike a balance between the need to compensate customers for the inconvenience they experience and creating the opportunity for consumer fraud.

Additionally, to further protect consumer interests in unusual circumstances, the Commission could add a rule, as is included in the FCC rules, providing for a waiver of the 30-day limitation of its absolution period if it is necessary "to provide a subscriber with a fair and equitable resolution."<sup>13</sup>

Rule 20:10:34:07 goes on to state that the telecommunications company which initiates a telecommunications company charge without proper authorization shall pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the Commission. The FCC's stayed rule had determined that the 30-day absolution period in its rules is intended to "satisfy Congress' policy that 'consumers be made whole.'"<sup>14</sup> Requiring telecommunications companies to pay customers \$1,000 for unauthorized carrier charges again only serves to incent consumers to take unfair advantage of carriers. AT&T asks that the Commission balance the need to compensate customers for the inconvenience they experience and creating an opportunity for consumers to take unfair advantage of carriers and eliminate this provision of the rule.

In addition, AT&T asks for clarification of this rule. First, the rule states that the telecommunications company that has made an unauthorized change must pay the subscriber one thousand dollars regardless of whether the subscriber has contacted the

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<sup>13</sup> *Id.* at ¶ 24.

<sup>14</sup> *Id.* at ¶ 27.



Commission. AT&T asks the Commission to set forth how the allegation against the telecommunications company will be brought to its attention.

Next, although the proposed rule allows the telecommunications company or subscriber the opportunity to request a hearing in the event of a dispute as to whether a change was properly authorized, it does not specify whether the \$1,000 payment can be deferred pending the outcome of the hearing. Requiring companies to pay to claims before an adjudicatory body determines that the claims are valid would violate the due process rights afforded everyone under the United States Constitution and it would constitute a taking under that document as well. Thus, AT&T asks the Commission to clarify this issue and state that the penalty will not be paid until after the hearing has been held and the company has been found in violation of the Commission's rules.

#### **V. NOTIFICATION OF INCREASE IN RATES**

Rule 20:10:34:10 requires that telecommunications companies provide prior notification to subscribers if any changes will result in an increase in rates. AT&T requests that the Commission clarify this rule to allow telecommunications carriers flexibility in the methods used to comply with this notification requirement.

For instance, AT&T uses a broad variety of means to provide various customer notifications, e.g., bill inserts, publication in local and national newspapers, line item on bills. It is unclear from the language of the rule whether carriers can utilize all of these options for notifying customers. During the hearing in this docket, the Commission indicated that publication would not be permitted under the rule. AT&T respectfully asks

that the Commission reconsider this reading of the rule and allow flexibility in notification methods.

An example of when a newspaper advertisement might be the most efficient and timely means of customer notification of a rate increase is when a customer has an AT&T calling card, but his or her phone number is presubscribed to another carrier. The customer keeps the calling card for occasional use while he or she is traveling. The customer does not use the card on a regular basis, and therefore, only receives a bill from AT&T in the months when he or she uses the card. If a bill increase is noted in a bill insert or line on a month where the customer does not receive the bill, he or she will not receive the notification.

In addition, in many cases AT&T, similar to many other interexchange carriers, does not issue its own bills but rather contracts with the local exchange company for billing services. In such cases, the bill format and the specific date that rate information could be included on the bill or in a bill insert are controlled by the local exchange company, not the interexchange carrier.

Accordingly, AT&T asks the Commission to specify that telecommunications carriers may accomplish this notification requirement through a variety of reasonable means. AT&T also agrees with the Commission Staff's recommendation that the rule be designated with its own heading clearly identifying the customer notification requirement.

## **VI. COMPLAINTS OF UNAUTHORIZED BILLING OF PRODUCTS OR SERVICES**

Rule 20:10:34:10.01 states that "Upon receipt of an oral or written complaint alleging the billing of unauthorized products or services from a subscriber, the subscriber's original presubscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, showing that the billing was authorized. If a telecommunications company fails to provide the documentation, the charge is considered invalid." AT&T asks for clarification as to whom the accused telecommunications company should provide the documentation showing that a charge was authorized.

## **VII. REFUND OR CREDIT OF UNAUTHORIZED CHARGES**

AT&T believes that Rule 20:10:34:11 presents the same issues as previously discussed in Section IV of these comments. Allowing for an unlimited time period for a customer to receive free products or services invites consumer fraud. AT&T asks the Commission to balance the need to protect customers against slamming and the need to protect carriers from being taken unfair advantage of by unscrupulous customers. Accordingly, AT&T requests that the Commission include a time limit in this rule.

Respectfully submitted this 24th day of May, 1999.

**AT&T COMMUNICATIONS OF  
THE MIDWEST, INC.**

By: *James Robbennolt*  
John S. Lovald

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Exhibit A

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**AT&T PROPOSES BOLD NEW INITIATIVES TO ERADICATE SLAMMING  
— Recommends Tough, Uniform Anti-Slamming Measures Be Implemented  
Nationwide**

FOR RELEASE: MARCH 3, 1998

NEW YORK — AT&T today announced it has undertaken bold new initiatives to eradicate "slamming," the fraudulent practice of switching consumers from their preferred communications company without their consent.

"We want to eliminate slamming from our industry and are taking the steps today to do so," said C. Michael Armstrong, AT&T's chairman and CEO. "We will work to preserve choice by doing what is right for consumers.

"As the industry leader, we have zero tolerance for slamming," said Armstrong. "That is why we are also announcing today three tough new measures to ensure that our own house is in order."

- AT&T will voluntarily and unilaterally suspend the use of outside sales agents for consumer marketing efforts at local community events. AT&T has discovered that these vendors generate an unacceptable level of complaints. The company will not resume use of these vendors until we are comfortable that they can meet AT&T's zero tolerance policy toward slamming.

- more -

- AT&T has established a slamming resolution center 1-800-537-5345 to provide dedicated service representatives 24-hours a day, seven days a week to resolve any consumer slamming complaints involving AT&T. The center is committed to resolve most slamming inquiries on the first call and any that require further investigation within three business days. The center's capabilities will be expanded to handle business customer slamming inquiries on April 1.
- AT&T will charge companies that resell our network facilities for the cost of handling each valid customer slamming complaint they cause. AT&T will also step up its monitoring of those companies' marketing practices to ensure that they are not misrepresenting themselves as AT&T.

"These extra steps, which go above and beyond current industry practices, will give consumers an added level of protection. We believe our entire industry should take this approach as well," Armstrong said.

Public policy makers in Congress and in the states have been increasingly concerned about slamming. AT&T hopes its actions today will be constructive as Congress continues to address this issue. That's why AT&T is calling on the FCC to use the authority Congress gave it in the 1996 Telecommunications Act to put in place the following industry-wide safeguards:

- \* The requirement that all changes in local, local toll, and long distance service for residential customers be verified by an independent third party before they can be processed. This verification now occurs only when communications companies call customers to solicit their business. AT&T is proposing that verification also take place when customers themselves initiate the call, submit a signed form requesting a change in service, or agree to have their service switched while attending a local event in their community. AT&T will begin to develop the systems and training necessary to implement third party verification on all residential carrier changes, following FCC adoption of nationwide rules.
- \* The implementation of stricter anti-slamming rules for the communications industry, including rules involving compensation to companies whose customers have been slammed. We propose a stiff carrier-to-carrier penalty of \$1,000 per valid slamming incident.
- \* The tightening of FCC rules on third party verification to prevent unscrupulous carriers from using scripts that mislead customers as to the identity of the carrier actually soliciting their business.
- \* The elimination of local telephone company control over the processing of changes to local, local toll, and long distance communications services. This could be accomplished by setting up an independent company to handle such changes. This measure will take service change activities out of the hands of the local telephone companies, which have a vested interest in maintaining their monopoly position.

Since the early 1990s, AT&T has been in the forefront in condemning slamming and finding ways to eliminate this industry problem. Based on the most recent FCC studies, the company's performance is the best in the industry. AT&T has also coordinated several consumer education campaigns on slamming over the last decade that has reached consumers in eight languages.

# # #

**Editor's Note:** AT&T Chairman and CEO C. Michael Armstrong will hold an audio news briefing at 11:00 a.m. EST today. Reporters in the United States wanting to join the teleconference can call 1-800-260-0718. Beginning at 1:30 p.m. EST today, a rebroadcast of the audio news briefing will be repeated for 48 hours at 1-800-475-6701, access code 381490.

January 31, 1999

P.O. Box 5158  
Clinton, NJ 07015-0158

#####  
John R. Sample 0  
Suite 3673  
123 Main Street  
Anytown, MA 12345-9999

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Once again, we are thrilled to have you as an AT&T customer. We're grateful for the opportunity to provide you with the exceptional combination of service and reliability you can expect from AT&T. If you're not sure whether you've been switched to AT&T yet, call toll free 1 700-555-4141 from the phone you need to verify.

If you have any questions or would like more information on any of the programs offered by AT&T, please call us day or night at 1 800 222-0300.

Cordially

Karin Mulvaney  
Karin Mulvaney

Manager, AT&T Consumer Residential Service

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# CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of May, 1999, the original and 10 copies of AT&T Communications of the Midwest, Inc.'s Comments in Docket No. RM99-001 were hand delivered to:

William Bullard, Jr  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

**RECEIVED**

MAY 24 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

and true and correct copies were delivered via regular mail this 24<sup>th</sup> day of May, 1999 to:

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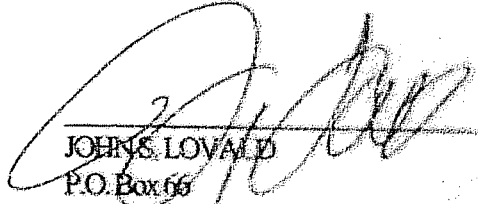
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MAY 24 1999

AND DELIVERED

Mr. William Bullard, Jr.  
Executive Director  
Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, South Dakota 57

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: IN THE MATTER OF THE ESTABLISHMENT OF REVISED  
TELECOMMUNICATIONS RULES

Docket RM99-001

Our file: 0175.5; Slamming Rules

EX-111

Enclosed are original and ten copies of comments on behalf of MCI, signed by Karen L. Clauson, Senior Attorney for MCI WorldCom and MCI Telecommunications Corporation. Please file the enclosures.

You will note that the original bears Karen's telecopier signature. She is overnighting the original signature page, and I will get it to you for filing when I receive it.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY

DAF : 1718

Enclosures

cc/enc: Karen Clauson

MAY 24 1993

## BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT OF REVISED TELECOMMUNICATIONS RULES	) ) ) ) )	RM99-001
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**COMMENTS OF MCIW  
ON PROPOSED SLAMMING RULES**

**I. INTRODUCTION**

MCI WorldCom, Inc., and MCI Telecommunications Corporation (referred to collectively as "MCIW") submit these comments in response to the request for comments on proposed rules 20:10:34:01 to 20:10:34:11 contained in the Notice of Public Hearing to Adopt Rules ("Notice") issued by the South Dakota Public Utilities Commission ("Commission"). MCIW is committed to the proposition that a customer's choice to select a competitive carrier for long distance and intraLATA toll service not be frustrated or impeded by slamming.

Slamming harms consumers and carriers. MCIW has lost millions of dollars in revenues in recent years because large numbers of our customers are switched away from MCIW without their consent. MCIW has been an industry leader in opposing slamming and working with regulators to develop anti-slamming rules. The Federal Communications Commission's ("FCC") rules,<sup>1</sup> South Dakota's statute, and the proposed rules provide for third-party verification ("TPV") as an authorized method to validate customer change requests. See *id.*, SDCL 49-31-90;

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<sup>1</sup>See *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-129 (adopted December 17, 1998) ("FCC Second Report and Order").

proposed Rule 20:10:34:02.01. MCIW began using TPV for outbound telemarketing in late 1991, before the first FCC order. MCIW has been using TPV for virtually every customer order since August 1996. Moreover, MCIW has voluntarily recorded the entire TPV conversation since April 1998. MCIW has been in full compliance with the FCC's TPV rules since they became effective on April 27, 1999.

## II. PROPOSED RULES

Consistent with MCIW's pro-consumer history of working cooperatively with the industry and regulators toward development of rules governing slamming, MCIW provides the following comments on the proposed anti-slammng rules in South Dakota.

### A. Unauthorized Changes by Initiating Carrier

After setting out when a change of carrier is properly authorized (such as through use of TPV), see proposed Rule 20:10:34:02.01, the proposed rules go on to address the consequences of changes without authorization, such as imposition of credits, refunds, and penalties. These rules apply to a "telecommunications company which *initiates* a telecommunications company change *without authorization* from the subscriber." See, e.g., proposed Rule 20:10:34:07. While other issues associated with imposition of credits, refunds, and penalties are discussed below, it is important to begin by clarifying the meaning of an unauthorized change or conversion by an initiating carrier. If the rules do not sufficiently define the wrongful conduct and clarify which company is the wrongdoer, the substantial ensuing consequences could fall on the wrong party. This is particularly true in two situations: (1) unauthorized changes generated (i.e., "initiated,") by local exchange carriers ("LECs"); and (2) inadvertent unauthorized changes

First, interexchange carriers should not be held liable for unauthorized changes generated by LECs. For example:

Assume that a local exchange carrier sends to an interexchange carrier a transaction record indicating that a customer's Primary Interexchange Carrier ("PIC") was switched. The interexchange carrier then establishes an account and begins serving and billing the customer, consistent with the record received from the LEC. Later, the interexchange carrier discovers that the change was unauthorized.

In this situation, the interexchange carrier has not voluntarily *initiated* an unauthorized change in the customer's telecommunications company. This interexchange carrier should not be liable under the Commission's rule, even though that carrier would not be able to provide proof of authorization. Only an investigation involving the collaboration of the LEC may ultimately uncover the error which caused the interexchange carrier to begin providing service to the customer. Defining unauthorized changes by initiating carriers to exclude liability in these cases is consistent with the federal Act. Section 258 of the Act makes it illegal for a carrier to "initiate or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. § 258 (emphasis added). When the LEC initiates, submits, or executes the unauthorized change, the interexchange carrier is not the wrongdoer and should not be held liable.

Second, interexchange carriers should not be held liable for the penalties available under South Dakota law in cases involving *inadvertent* unauthorized changes. Inadvertent errors inevitably occur in any process that involves large numbers of transactions. As recognized by the FCC, "even with the greatest care, innocent mistakes will occur and may result in unauthorized changes." FCC Second Report and Order, ¶ 52. South Dakota's statute specifically requires the



Commission to consider the "*good faith*" of the person charged in attempting to achieve compliance" when determining the amount of a penalty upon finding a violation of the statute or rules. SDCL 49-31-94 (emphasis added). Even under the FCC's rules, which do not contain the same penalties, the FCC, while otherwise holding carriers liable for inadvertent unauthorized changes, "will take into consideration in any enforcement action the willfulness of the carriers involved." FCC Second Report and Order, ¶ 52. Due to the greater financial penalties available under South Dakota law, including fines of up to \$20,000 for each offense, the rules should clarify that any liability beyond that available under the FCC rules should not be assessed when a carrier acts in good faith but nonetheless inadvertently makes an unauthorized change.

**B. Letter of Agency Form and Content**

MCIW supports consistency across states in terms of anti-slamming policies,<sup>2</sup> including the form and content of letters of agency ("LOAs"). If carriers operating in multiple states are allowed to follow one set of procedures for the form and content of LOAs nationwide, opportunities for errors and unnecessary expenses will be reduced. Customer education will also be made easier because a consistent, well developed education program can be put into place more rapidly and easily. Therefore, consistency across the states in terms of anti-slamming policies will prove to be an effective consumer protection measure in itself.

Proposed Rule 20:10:34:03, while in many respects consistent with federal rules, contains a requirement to include a toll-free number of the prospective telecommunications company in

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<sup>2</sup> The industry continues to work with the FCC on its anti-slamming rules. As discussed below, because this Commission must issue rules by July 1, 1999, it should incorporate into those rules the flexibility to respond to later developments in the industry plan and FCC rules, so that it may take advantage of any benefits offered by such developments.

the LOA. This is inconsistent with the federal rules, as well as the practices of some companies. For example, MCIW places its toll-free number in its promotional materials, rather than in the LOA itself. This allows MCIW to inform the customer of its number while maintaining its ability to use one LOA form across many states. If MCIW must change its practice to move the number from the promotional materials to the LOA in South Dakota, MCIW will need a state-specific LOA for South Dakota. Customers and carriers lose the benefits of using one LOA across states if such a requirement is imposed.

MCIW's practice meets the purpose of the proposed rule, because customers receive MCIW's toll-free number and are able to contact MCIW with any questions or comments. In a competitive market, any carrier wishing to attract and retain customers will likewise have an incentive to include its contact information in their materials so customers can reach the carrier to sign up for service. There is no need, therefore, to mandate inclusion of the number in the LOA, particularly given the policy and financial costs of deviating from a form that can be used across the nation.

**C. Refund or Credit of Charges Billed by Unauthorized Telecommunications Company and Payment of \$1,000 for Unauthorized Change**

Proposed Rule 20:10:34:07 deals with two issues: credits or refunds of unauthorized charges; and a \$1,000 penalty to be imposed when a telecommunications company initiates a change without proper authorization.

## I. Credits or Refunds

The first paragraph of proposed Rule 20:10:34:07 deals with absolving customers of liability for unauthorized charges and holding the unauthorized carrier responsible for charges incurred in restoring the customer to the proper carrier. These sorts of measures are designed to "discourage slamming by taking the profit out of this fraudulent practice." FCC Second Report and Order ¶ 19. As the FCC has found after extensive investigation of this issue, adoption of such measures both implicates additional public policies beyond that of discouraging slamming and requires examination of the obligations and mechanisms for implementing those requirements and resolving disputes.

### a. Public Policy

First, while the public policy of discouraging slamming is a very important one, it is also important to limit opportunities for consumers to improperly report that they were slammed to obtain free telephone service or otherwise "take possible unfair advantage of carriers." FCC Second Report and Order ¶¶ 22-23. Proposed rule 20:10:34:07 as written could be read to mean that, if a customer discovered an unauthorized change a week after it was made (when the customer received a welcome kit from the new carrier) but chose not to disclose it for 23 months, the customer would be absolved of liability for all charges for that entire 23 month period (or, for that matter, any unlimited period). If the customer waited 25 months to report the unauthorized change, the carrier may be deprived of any opportunity to provide a defense, because the carrier need only retain evidence of TPV for two years. See SDCL 49-31-90. Despite compliance with that statutory requirement regarding retention of records, the carrier would still be exposed to liability for charges or refunds - to a customer who has acted in bad faith. An unlimited

absolution of this type does not advance the public interest, and the rules should be clarified to ensure that this cannot occur.

Specifically, the rules need to provide an "incentive for consumers to review their bills carefully and promptly." FCC Second Report and Order ¶ 23. For example, to further this goal, the FCC limited the time period for which customers could be absolved of liability for charges to up to thirty days and applied that absolution of liability only when the customer has not yet paid the charges. *Id.* ¶¶ 23, 29.<sup>3</sup> Without such safeguards in the rules, subscribers can cause unauthorized charges to become excessive by delaying reporting that they were slammed and incurring significant charges in the interval before finally reporting it, knowing that they will be absolved of those charges anyway. When a customer causes the harm resulting from the unauthorized change, the customer should not be rewarded for that behavior.

The proposed rules already introduce this concept of causation. For example, the proposed rules refer to unauthorized charges "*attributable* to telecommunications services from the unauthorized telecommunications company." Proposed Rule 20:10:34:07 (emphasis added). This concept should be expanded to clarify that charges "attributable" to the carrier do not include those actually attributable to a customer's fraud or inappropriate conduct, such as the customer's fraudulently reporting an allegedly unauthorized change or neglecting to report an unauthorized change to obtain free telephone service. Particularly after a customer is or should be aware of a change of carrier (such as when the customer receives a welcome kit or bill

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<sup>3</sup> Of course, even during that 30-day period, the customer is obtaining the benefit of telephone service. To the extent that the customer does not have to pay even the charges that would have been paid to the authorized carrier, the customer receives a windfall and is unjustly enriched. The innocent carrier should not be deprived of compensation.

reflecting the change) and does not report it, the customer should be presumed to have authorized the change. No credit, refund, or penalty is due to a customer when the change is authorized. See SDCL 49-31-93.

**b. Implementation and Dispute Resolution**

Second, adoption of a system of credits and refunds requires consideration of the obligations and mechanisms for implementing those requirements and resolving disputes. These are difficult issues. Even after extensive investigation into procedures for resolving disputes among carriers and subscribers with regard to slamming, the FCC recognized that carriers may be able to develop other procedures that "better serve to address" the FCC's concerns. FCC Second Report and Order ¶ 55. The FCC endorsed an alternative to its rules, recognizing that an independent third party liability administrator ("TPA") could "discharge carrier obligations for resolving disputes among carriers with regard to slamming." *Id.* The FCC pointed out that:

Consumers would benefit by having one point of contact to resolve slamming problems. Carriers would benefit by having a neutral body to resolve disputes regarding slamming liability. LECs would no longer be the recipients of angry phone calls from consumers who have been slammed by long distance carriers, while IXC's would be able to divert their resources by preventing slamming rather than resolving slamming disputes.

*Id.* The FCC encouraged carriers to develop a TPA proposal and indicated that, if an adequate proposal were submitted, it would "be open to receiving requests for waiver of the liability provisions of our rules for carriers that agree to implement" such an alternative. *Id.*

Sharing the FCC's view that a TPA system would be the best solution to the problem of unauthorized conversions, industry participants have worked diligently and expended substantial resources to develop a satisfactory TPA proposal and have submitted that proposal to the FCC.



The proposal calls for a neutral, industry-funded TPA to switch consumers back to their preferred carriers and, if appropriate, ensure credits are issued. Various consumer groups, including the Consumer Federation of America, the Small Business Survival Committee, the Competitive Policy Institute, and the American Association of Retired Persons, have advised the FCC that they prefer a TPA solution to the FCC's current rules.

The FCC's rules, unfortunately, did not allow time for implementation of the TPA proposal. Recently, however, the D.C. Circuit Court of Appeals stayed the liability and dispute resolution portions of the FCC's rules. *MCIW v. FCC*, Docket No. 99-1125 (D.C. Cir. May 18, 1999). The stay will allow time for consideration of the TPA proposal, as well as pending petitions for reconsideration. The reconsideration petitions explain that the FCC rules as written are overly complex and burdensome and the industry does not have in place the requisite systems to implement them. Under the TPA proposal, customers will receive faster resolution of complaints than under the FCC rules.

This Commission does not have time to await developments on these issues, because it must issue rules by July 1, 1999. Nonetheless, the Commission should adopt rules that are flexible enough to allow the Commission to incorporate plans and rules approved later by the FCC. This will allow it to take advantage of the diligent work of the industry and the FCC on these issues and the resulting benefits to consumers from the procedures adopted, such as the benefit of having one point of contact to resolve slamming problems. It will also avoid conflicts between the rules that could lead to legal delays (such as preemption and jurisdiction claims) and practical problems with implementing different procedures. As discussed, consistency across

states in terms of anti-slamming policies and procedures will reduce errors, unnecessary expenses, and customer confusion.

Industry participants, the FCC, and this Commission want the same thing - a swift and efficient mechanism for combating unauthorized carrier switches. MCIW has taken a leadership role in developing a neutral, consumer-friendly proposal. As MCIW and its customers are major victims of slamming, MCIW wants to work with this Commission, as well as the FCC, in prompt consideration of the industry plan and workable anti-slamming rules.

## **2. \$1,000 Penalty**

After addressing credits and refunds, proposed Rule 20:10:34-07 attempts to define the circumstances under which a carrier must pay to a subscriber the \$1,000 penalty allowed by SDCL 49-31-93. South Dakota's anti-slamming statute makes clear that this penalty is payable only by the carrier that *initiates* the unauthorized change or practice and only when that change or practice is *without* proper authorization. SDCL 49-31-93. Therefore, proven slamming, and not merely an allegation of slamming, is required to trigger the penalty. *See id.* As discussed above, charges should not be considered unauthorized charges by an initiating carrier when they are attributable to (*i.e.*, initiated by) wrongful customer conduct, such as a customer's fraudulently reporting an allegedly unauthorized change or neglecting to report an unauthorized change to obtain free telephone service.

The \$1,000 amount is unrelated to the amount of any damages or charges. Therefore, it is not compensatory but is a penalty for violation of the statutory prohibition against unauthorized changes. South Dakota's statute specifically requires the Commission to consider the "good faith of the person charged in attempting to achieve compliance" when determining the amount of a

penalty upon finding a violation of the statute or rules. SDCL 49-31-94. A carrier that acts in good faith but nonetheless inadvertently makes an unauthorized change should not be liable for a \$1,000 or greater penalty.

No penalty may be imposed without due process of law. Proposed Rule 20:10:34:07 allows a subscriber or carrier to request a hearing if "there is a dispute as to whether the change was properly authorized." It does not allow an opportunity for hearing for other disputes, nor does it explain the relationship between the hearing allowed under that rule and the opportunity for hearing required by SDCL 49-31-94. Carriers should not be penalized for exercising their right to due process. It appears, however, that a carrier that requests a hearing under proposed Rule 20:10:34:07 may, by virtue of that request, expose itself to an increase in potential liability from \$1,000 (pursuant to SDCL 49-31-93) to \$20,000 (pursuant to SDCL 49-31-94). If so, that increase in risk may force carriers to pay the \$1,000 penalty, even when the carriers engaged in no wrongdoing. In any case, the expense of a full-blown hearing, which is most certainly greater than the \$1,000 penalty, will deter innocent carriers from pursuing their right to due process. This is an unjust result that presents many opportunities for mischief and mistake, rather than incentives for appropriate behavior.

Due to the increased risk and cost of pursuing a hearing, the \$1,000 penalty will become payable, in effect, upon an *allegation* of an unauthorized change, rather than upon a *finding* of an unauthorized change. An actual finding of wrongdoing is required, however, by SDCL 49-31-94 and principles of due process. Allegations of slamming often prove to be something else upon investigation. The change may have been due to an error (on the part of the customer or carrier), the inappropriate flow of information from a reseller to an underlying carrier, a conflict between

different decision makers in the customer's household, or even a customer's own remorse or confusion about a decision to switch away from a long-time carrier. Moreover, the prospect of receiving a refund of 100 percent of the cost of telecommunications services and a \$1,000 payment will surely lead to an increase in the number of unfounded slamming allegations.

To ensure due process and avoid unjust results, the rules need to provide some mechanism for ensuring that the \$1,000 penalty is not imposed automatically and improperly. This needs to be done without costing more to dispute the penalty than the amount of the penalty itself. The Commission should implement through its rules an expedited, informal, and inexpensive process to ensure due process before payment of the \$1,000 penalty is required. This will also save the Commission's administrative resources, as well as expense to consumers and carriers, because disputes will be resolved earlier and full-blown hearings will be avoided.

**D. Opportunity for Hearing Before Imposition of Penalties**

SDCL 49-31-94 provides that the Commission may impose a civil penalty of not more than \$20,000 for each offense only after notice and opportunity for a hearing. This statute also lists several factors that the Commission must consider before imposing any penalty. The proposed rules do not comment on the procedure for such a hearing or application of those factors. For example, whereas proposed Rule 20:10:34:07 refers to the hearing procedures pursuant to SDCL Chapter 1-26, the rules do not indicate if those are the procedures applicable to a hearing under SDCL 49-31-94. Perhaps an expedited process should be made available and a requirement imposed to discuss in a written order each of the factors listed in the statute.



### III. CONCLUSION

For all of the reasons stated, the Commission should further the good work it has done in proposing anti-slamming rules by incorporating into its rules provisions that will ensure against imposition of financial penalties for unauthorized changes generated by LECs and inadvertent unauthorized changes, eliminate state-specific LOA requirements that detract from the benefits of consistency across states, provide incentives for consumers to review their bills carefully and promptly, include the flexibility to incorporate the benefits of work done later by the industry and FCC, ensure due process of law before imposition of any penalties, and clarify the procedures to be used in hearings regarding imposition of penalties. MCI WorldCom appreciates this opportunity to participate in this process.

DATED: May 21, 1999

MCI WorldCom, Inc. and  
MCI Telecommunications Corporation

By: 

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Todd L. Lundy  
General Attorney

VIA FEDERAL EXPRESS

May 24, 1999

RECEIVED

MAY 25 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

FAX Received MAY 24 1999

RE: In the Matter of the Establishment of Revised Telecommunications Rules; Docket  
No. RM99-001

Dear Mr. Bullard:

Enclosed for filing are an original and ten (10) copies of U S West's Comments in the  
Matter of the Establishment of Revised Telecommunications Rules. This document has also  
been filed via facsimile on this date.

I have enclosed a copy of the document to be date-stamped and returned to me in the  
enclosed self-addressed stamped envelope. Thank you for your cooperation.

Sincerely,

*Todd Lundy*

Todd Lundy

Enclosures



RECEIVED

MAY 25 1999

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT )  
OF REVISED TELECOMMUNICATIONS )  
RULES )

RM99-001

U S WEST'S COMMENTS

U S WEST Communications, Inc. (U S WEST), through counsel, submits its comments to the Commission's proposed slamming rules and responds to the inquiries of the Commission from the hearing of May 13, 1999.

**Requirement of separate authorizations**

With the implementation of dialing parity, consumers have the ability to select their preferred carriers for three different categories of telecommunications service: intraLATA toll, interLATA toll, and local exchange. These services are distinct in their nature, the providers, prices, and other characteristics.

The issue over separate authorizations for changes in carriers for each of these three service categories arose from the practice of some carriers of using one authorization to change carriers for both interLATA and intra LATA services. For example, AT&T's authorizations contained the following statement:

My signature confirms my authorization to switch my service to AT&T Long Distance Service, and Local Toll Service (if available in my area). I understand that only one long distance company may be designated for the telephone number listed on the front, and that my selection will apply only to that number....

The practice of using a single authorization for changing the carrier of more than one type of service can lead to consumer confusion over which service is the subject of the change.

The FCC's rules addressed this matter and ruled as follows:

We also require carriers to identify specifically the types of service or services being offered (e.g., interLATA toll, intraLATA toll, local exchange) in any preferred carrier solicitation or letter of agency, and to obtain separate authorization and verification for each service that is being changed. The

separate authorization and verification may be received and conducted during the same telemarketing solicitation or obtained in separate statements on the same LOA form. We merely require that each service be identified and delineated clearly to the subscriber. For example, a carrier that calls a subscriber to market both intraLATA toll and interLATA toll services must explain to the subscriber the difference between the two services. Then the carrier must obtain separate authorization for each service. The subscribers authorizations to change intraLATA toll and interLATA carriers must also be verified separately. We adopt this rule in response to the concerns of carriers such as Ameritech and CBT that consumers may experience considerable confusion about the differences among telecommunications services, especially the distinction between intraLATA toll and interLATA toll. By requiring carriers to describe fully the services they offer, and obtain separate authorization and verification for different services, carriers will be prevented from taking advantage of consumer confusion and changing the preferred carriers for all of a subscribers telecommunications services where the subscriber merely intended to change one.

*In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129 (Dec. 17, 1998) (hereinafter "FCC Order"), at ¶ 82. Thus, the FCC rules require separate authorizations for carrier changes for intraLATA toll, interLATA toll, and local exchange services.

The South Dakota Legislature provided similar protections for consumers making carrier changes. Section 4 of S.B. 238 says:

A telecommunications company selling more than one type of telecommunications service must obtain separate authorization to change a telecommunications company from the subscriber for each service sold, although the authorizations may be made within the same solicitation. At a minimum, separate authorizations must be obtained for local exchange service, intraLATA toll service, and interLATA toll service. Each authorization must be verified separately from any other authorizations obtained in the same solicitation.

Thus, South Dakota law requires separate verifications for each of the three categories of services, even though a carrier may submit the verifications as part of the same solicitation.

### Clarification of "initiating carriers"

U S WEST agrees with the comments of the South Dakota Independent Telephone Coalition (SDITC) made at the May 13 hearing that clarification of the word "initiates" in Section 5 of S.B. 238 may prevent future confusion over the Legislature's intent. Section 5 says:

A subscriber is not liable for any charges imposed by a telecommunications company that **initiates** a telecommunications carrier change without authorization from the subscriber or for the billing of unauthorized products or services. In addition, the telecommunications company that **initiates** the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars. (Emphasis added).

As stated by counsel for the SDITC, the Commission should employ or incorporate the FCC's definitions in 47 C.F.R. § 64.1100 for "submitting carrier," which says:

[A] submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

This definition may have to be modified to address unauthorized products and services, which also is addressed in Section 5 of S.B. 238. Thus, a company that "initiates the unauthorized change or the billing of unauthorized products or services" includes a telecommunications carrier that requests on the behalf of a subscriber that the subscriber receive products or services and seeks to provide such products or services to the end user.

U S WEST also agrees with SDITC's suggestion that the term "initiates" be confined to the definition of a "submitting carrier." The word "initiates" does not mean anything that may be within the FCC's definition of an "executing carrier," which the FCC rules define as "any telecommunications carrier that effects a request that a subscriber's telecommunications carrier

be changed [or a request that the subscriber receive certain products or services]." 47 C.F.R. § 64.1100.

#### **Procedures for ordering local services**

The Commissioners and Staff inquired into the authorization procedures that should be employed for customer requests for local services such as Caller ID, Call Waiting, Voice Messaging, or the like. As explained below, U S WEST does not have any facility, equipment, procedure, or ability to employ a written authorization procedure for customer requests of enhanced services. Further, any requirement for written authorization would run contrary to the customers' demand and expectation that such enhanced services can be ordered and employed almost immediately.

U S WEST does not use written authorizations for any of its services. U S WEST employs customer representative centers in a few locations that serve the entire fourteen-state region. The service order requests from customers generally are entered by the customer representatives. U S WEST's authorizations for services such as intraLATA toll are performed through the third-party verification method. The costs necessary to implement a written verification process for enhanced services would be astronomical.

Notwithstanding the fact that U S WEST has no written authorization process in place, a requirement of written authorizations for enhanced services would not be commercially reasonable and would be inconsistent with customers' expectations for obtaining such services. The telecommunications industry always has taken such orders through customer representatives, or the like, and the service is provided in a relatively short period of time. Any requirement that the telecommunications carrier receive a written authorization for ancillary products or services before the service is available for use would result in the carrier engaging in extensive follow-up



procedures with the customer. Consumers have an expectation to receive ancillary services almost immediately, and any written authorization requirement would frustrate customer expectations and the industry's provision of ancillary services relatively quickly.

Therefore, U S WEST suggests that a telecommunications company's internal service order documents serve as the documentation showing that the deployment of an enhanced service was authorized by a customer.

The Commission also inquired into the time period from when a customer requests the termination of an enhanced service until that request is implemented and removed from the customer's bill. It is U S WEST's practice to stop billing a customer for an enhanced service from the day of the customer's termination request, even though the service actually may not be disconnected until days later. The customer's bill should reflect the period of service from the request for service until the day of the requested termination. If the customer's bill incorrectly reflects charges for enhanced services after the customer requested termination of such service, the bill is adjusted accordingly.

Having said all this, U S WEST suggests that the Commission refrain from imposing any regulations concerning a time period for removal of charges for enhanced services. If a charge appears on U S WEST's bill for services provided after a customer has requested termination of such services, the billing was unintentional. U S WEST will adjust the customer's bill according to the requested termination; however, it should not be subject to penalization for unintentional billing errors.

#### **PIC Password Verifications**

The Commissioners expressed interest and more information regarding U S WEST's comments about implementation of a password method for verifying requests for carrier

changes. This section of U S WEST's Comments describes some of U S WEST's thoughts and ideas about the password concept; however, U S WEST has neither the ability nor the capacity at the present to implement any of these procedures. Therefore, U S WEST requests that the Commission not implement any rules regarding a password method at the present time.

Further, a password system requires industry-wide discussion, consultation, and agreement. Absent an agreement among all the carriers, a password system is not possible. U S WEST is just starting the process of conferring and consulting with other members of the industry about the password concept. With those qualifications, U S WEST offers the following information for the Commission and other commenters.

The PIC password concept is derived from use of passwords and personal identification numbers that are commonly and successfully used for automatic teller machines, debit cards, voice mail, computers, pagers, and other forms of consumer services. Consumers generally understand how passwords function and how they provide control and security over their accounts.

One possible PIC password method could work by assigning each customer account with a separate password for the interLATA PIC, intraLATA PIC, and local exchange choice. These passwords would appear on the customers' bills each month, along with an explanation of what they are and how to use them. Customers desiring to change their carrier choices would provide the new carrier with the corresponding password for an interLATA, intraLATA, or local service change. The new carrier sends the password to the LEC along with the change transaction. The LEC then validates the password and enters the change in PIC selection. Of course, if the carrier submits a PIC change without a correct password, then the LEC would not accept the change, and would advise the carrier that the password was incorrect or absent.

Procedures could be implemented to allow the customer to change carriers even though they cannot remember or locate their passwords. The carrier can initiate a three-way call among the new carrier, the customer, and the LEC to authorize the change.

Dated this 24<sup>th</sup> day of May, 1999.

Respectfully submitted,

By: Todd L. Lundy  
Todd L. Lundy  
Senior Attorney  
U S WEST, Communications, Inc.  
1801 California, Suite 5100  
Denver, CO 80202  
(303) 672-2783

**PUBLIC UTILITIES COMMISSION  
MINUTES OF PUBLIC HEARING**

The Public Utilities Commission convened the public hearing at 1:30 p.m. on Thursday, May 13, 1999, in Room 412, Fourth Floor, State Capitol, Pierre, South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the Commission numbered 20:10:34:01 to 20:10:34:11, inclusive.

**Members of the Commission in Attendance:** Commissioners: Jim Burg, Pam Nelson, Laska Schoenfelder; Commission Staff: Rolayne Ailts Wiest, William Bullard, Camron Hoseck, Karen Cremer, Leni Healy, and Greg Rislov.

**Others in Attendance:** Todd Lundy, Mac McCracken, U S WEST; Rich Coit, SDITC; Letty Friesen, Mary Jane Rasher, Sandy Hofstetter, AT&T; Mary Lohnes, Midco; Rew Hanson, AARP; and Tom Harmon. William Heaston, representing DTG, joined the hearing by teleconference.

**Written Testimony**

The Commission received written comments from the following entities: AT&T, U S WEST, Midco Communications, MCIWorldCom, Inc. and MCI Telecommunications Corporation, South Dakota Independent Telephone Coalition, Inc. (SDITC), Sprint, Billing Concepts, Inc., and the AARP.

**Oral Testimony**

AT&T, represented by Mary Jane Rasher, Letty Friesen, and Sandy Hofstetter, stated that the rules were inconsistent with the FCC rules and therefore could be preempted. AT&T requested that liability to consumers be limited to thirty days to be consistent with the FCC rules. AT&T also asked that 20:10:34:10 be clarified and allow for notice of increases to be done through bill insert, publication, or any other reasonable means.

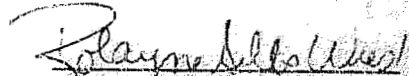
Rich Coit, representing SDITC, wanted to add FCC language concerning who is the submitting and executing carrier. He requested that no written confirmation from the customer be required in order to add or cancel services.

Mary Lohnes, representing Midco, requested that the word "intentional" be added to 20:10:34:07.

William Heaston, representing DTG, expressed concern about separate authorization. He stated that separate verifications can be on one form.

Rew Hanson, representing AARP, stated that he would study the rules and provide written comments.

Respectfully submitted,

  
Rolayne Ailts West  
General Counsel  
Public Utilities Commission



IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

APPROVAL OF RULES

Following public hearing held on May 13, 1999, the following rules are approved and will become effective twenty days after filing with the Secretary of State.

Proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive.


Date: May 28, 1999

Date 6/2/99

PUBLIC UTILITIES COMMISSION

  
James A. Burg, Chairman

  
Pam Nelson, Commissioner

  
LEGISLATIVE RESEARCH COUNCIL  
(for legality and for form and style)

## ARTICLE 20:10

### PUBLIC UTILITIES

#### Chapter

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules.
- 20:10:03 Motor carriers under ICC.
- 20:10:04 Motor carriers not under ICC.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public warehouses.
- 20:10:12 Grain dealers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities, Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.

- 20:10:21 Energy facility plans.
- 20:10:22 Energy facility siting rules.
- 20:10:23 Gas and electric advertising rules.
- 20:10:24 Interexchange carrier and classification rules.
- 20:10:25 Telecommunications facility construction notice rules, Repealed.
- 20:10:26 Master metering variance rules.
- 20:10:27 Telecommunications switched access filing rules.
- 20:10:28 Telecommunications separations procedures.
- 20:10:29 Telecommunications switched access charges.
- 20:10:30 Assignment of N11 dialing codes.
- 20:10:31 Assessment of fees for intrastate gas pipeline operators.
- 20:10:32 Local exchange service competition.
- 20:10:33 Service standards for telecommunications companies.
- 20:10:34 Prohibition against unauthorized switching changing of carriers  
telecommunications company and charging for unauthorized services.

#### CHAPTER 20:10:34

### PROHIBITION AGAINST UNAUTHORIZED SWITCHING CHANGING OF CARRIERS TELECOMMUNICATIONS COMPANY AND CHARGING FOR UNAUTHORIZED SERVICES

#### Section

- 20:10:34:01 Definitions Repealed.
- 20:10:34:02 Requirements for independent third party verification Repealed.
- 20:10:34:02.01. Authorization methods.

~~20:10:34:03~~ Letter of agency form and content.

~~20:10:34:04~~ ~~Letter of agency form and content~~ -- Exception for checks.

~~20:10:34:04.01~~ Electronic authorization.

~~20:10:34:05~~ Complaints of unauthorized ~~switching~~ changing of a telecommunications company.

~~20:10:34:06~~ False, misleading, or deceptive statements prohibited.

~~20:10:34:07~~ Refund or credit of charges billed by unauthorized telecommunications company -- Payment for unauthorized change -- Opportunity for hearing

~~20:10:34:08~~ Subscriber telecommunications bills -- Charges for change of telecommunications company.

~~20:10:34:09~~ Billing requirements.

~~20:10:34:10~~ ~~Authorized products or services~~ Notification of increase in rates.

~~20:10:34:10.01~~ Complaints of unauthorized billing of products or services.

~~20:10:34:11~~ Refund or credit of unauthorized charges -- Payment for unauthorized charge -- Opportunity for hearing.

~~20:10:34:01. Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

~~(1) "Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service Repealed.~~

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-2, 49-31-77, 49-31-85.~~

**20:10:34:02. Requirements for independent third-party verification. When an**

~~independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the third-party verification shall include:~~

~~(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;~~

~~(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;~~

~~(3) Verification data unique to the subscriber such as the subscriber's date of birth, and~~

~~(4) The name and toll-free telephone number of the newly requested telecommunications company.~~

~~The third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications company. The electronic recording shall be retained by the third-party verification company for 12 months. Repealed.~~



Source: 25 SDR 89, effective December 27, 1998.

General Authority: ~~SDCL 49-31-77, 49-31-85,~~

Law Implemented: ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85,~~

20:10:34:02.01. Authorization methods. No telecommunications company may change a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-90, 49-31-91.

20:10:34:03. Letter of agency form and content. A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a written document. ~~the~~ The sole purpose of ~~which~~ the letter of agency is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the change order;

- (2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;
- (3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;
- (4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's ~~interstate~~ interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's ~~intrastate~~ intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;
- (5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;
- (6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;
- (7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications ~~carrier~~ company;
- (8) If any portion of a letter of agency is translated into another language then each portion of the letter ~~or~~ of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and
- (9) A toll-free number ~~that the subscriber may call to verify if the change has occurred~~ of the prospective telecommunications company.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-76, 49-31-85~~ 49-31-89.

**20:10:34:04. ~~Letter of agency form and content~~ -- Exception for checks.**

Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

**Law Implemented:** SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:04.01. Electronic authorization.** Each telecommunications company electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Any call to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated

telecommunications company, and shall automatically record the originating automatic numbering identification.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89.

**20:10:34:05. Complaints of unauthorized switching changing of a telecommunications company.** Upon receipt of an oral or written complaint alleging an unauthorized switch in change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall investigate the complaint and ~~advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide documentation, without cost to the commission or the subscriber, that confirms the subscriber's valid authorization to switch telecommunications companies. This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber provide documentation, within 30 days and without cost, showing that the change was authorized.~~ The documentation shall be provided to the person alleging the unauthorized change. The company that initiates the change is the company that requests on behalf of a subscriber that the subscriber's telephone company be changed and seeks to provide retail services to

the subscriber. If a telecommunications company fails to provide the documentation, the change in of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (2)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-90, 49-31-92, 49-31-93.

20:10:34:06. False, misleading, or deceptive statements prohibited. When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company -- Payment for unauthorized change -- Opportunity for hearing. A telecommunications company which initiates a telecommunications carrier company change without authorization from the subscriber shall issue to the



subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which were paid by the subscriber and are attributable to telephone services telecommunications services from the unauthorized telecommunications company. If the unauthorized services were billed but not paid by the subscriber, the subscriber is not liable for the billed telephone services provided by the unauthorized telecommunications carrier. A telecommunications company which initiates a telecommunications carrier company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the switch change was unauthorized.

In addition, the telecommunications company which initiates a telecommunications company change without proper authorization shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-77, 49-31-85, 49-31-86, 49-31-89.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85, 49-31-89, 49-31-93, 49-31-94.

**20:10:34:08. Subscriber telecommunications bills -- Charges for change of telecommunications company.** A bill to a subscriber reflecting any charge to that subscriber for a change in changing the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing a to the new telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(3), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:09. Billing requirements.** A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:10. ~~Authorized products or services~~ Notification of increase in rates.** ~~Any products or services listed on a subscriber's bill must be authorized by the subscriber.~~ Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change ~~if it results may~~ result in an increase in rates. Written notification of an increase in rates shall be stated on the bill, a bill insert, or a separate letter for each customer who has pre-subscribed to the company for toll or local exchange service. If the customer has not pre-subscribed to the

company, notification of an increase in rates shall be made through newspaper publication or by any other reasonable means.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85, 49-31-89.

20:10:34:10.01. Complaints of unauthorized billing of products or services.

Upon receipt of an oral or written complaint alleging the billing of an unauthorized product or service from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. The documentation shall be provided to the person alleging the unauthorized billing. The company that initiates the billing is the company that requests billing for a product or service on behalf of a subscriber and seeks to provide the product or service to the subscriber. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-93.

**20:10:34:11. Refund or credit of unauthorized charges -- Payment for unauthorized charge -- Opportunity for hearing.** A telecommunications company which charges initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

**Source:** 25 SDR 89, effective December 27, 1998.

**General Authority:** ~~SDCL 49-31-77, 49-31-85 49-31-89.~~

**Law Implemented:** ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85 49-31-89, 49-31-93, 49-31-94.~~

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

AFFIDAVIT

I, Delaine Kolbo, hereby certify that on May 28, 1999, I mailed a full, true, and correct copy of the following rules adopted by the Public Utilities Commission on May 28, 1999, together with a copy of the minutes of the public hearing and written comments, to the members of the Interim Rules Review Committee, listed below, at their respective post office addresses:

Proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive

The Honorable Jerry Shoener, Chair  
State Senator  
4012 Clover Street  
Rapid City, SD 57702-0252

The Honorable Orville Smidt, Vice Chair  
State Representative  
117 Fourth Street  
Brookings, SD 57006-1915

The Honorable Eric Bogue  
State Senator  
P. O. Box 400  
Dupree, SD 57623-0400

The Honorable William Cerny  
State Representative  
Route 1, Box 2  
Burke, SD 57523-9505

The Honorable H. Paul Dennert  
State Senator  
11853 391st Avenue  
Columbia, SD 57433-7002

The Honorable Matthew Michels  
State Representative  
1213 Walnut Street  
Yankton, SD 57078

Subscribed and sworn to  
before me this 28th day  
of May, 1999.

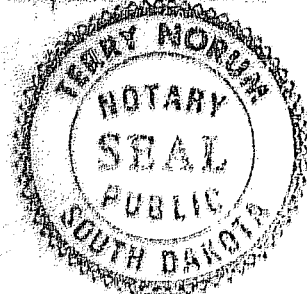
Terry Norum  
Notary Public - South Dakota

Delaine Kolbo  
Delaine Kolbo

(SEAL)

My Commission Expires

March 2, 2001







# Legislative Research Council

Rep. Kenneth G. McNenny, Chair  
Sen. Arnold M. Brown, Vice Chair

Terry C. Anderson, Director  
Doug Decker, Code Counsel

RECEIVED

JUN 03 1999

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

June 3, 1999

Ms. Rolayne Wiest  
Public Utilities Commission  
Capitol Building  
INTEROFFICE

Dear Ms. Wiest:

In order to facilitate the presentation of your rules to the interim Rules Review Committee at the meeting on June 16, 1999, please deliver eight copies of your rules in their current form to the Legislative Research Council no later than 12:00 p.m. on June 14, 1999.

Thank you for your cooperation in this matter. This procedure will expedite the presentation of your rules before the committee and give the committee members access to the best and most recent version of your rules.

Sincerely,

Doug Decker  
Code Counsel

DD:PP

*Delivered eight  
copies of the  
rules on 6/11/99*

IN THE MATTER OF THE  
PROMULGATION OF  
ADMINISTRATIVE RULES

APPROVAL OF RULES

Following public hearing held on May 13, 1999, the following rules are approved and will  
become effective twenty days after filing with the Secretary of State

Proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive.


Date: May 28, 1999

Date 6/7/99

PUBLIC UTILITIES COMMISSION

  
James A. Burg, Chairman

  
Pam Nelson, Commissioner

  
LEGISLATIVE RESEARCH COUNCIL  
(for legality and for form and style)

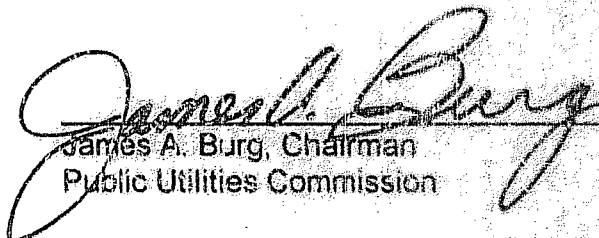
IN THE MATTER OF THE  
FROMULGATION OF  
ADMINISTRATIVE RULES

CERTIFICATE

I, James A. Burg, hereby certify that I am a duly appointed member and the duly elected chair of the Public Utilities Commission and that the attached instruments are full, true, and correct copies of the following rules adopted by the Public Utilities Commission on May 28, 1999.

Proposed revised rules: §§ 20:10:34:01 to 20:10:34:11, inclusive.

I further certify that SDCL 1-26-4 and 1-26-6 were complied with in the adoption of these rules. These rules will become effective twenty days after filing with the Secretary of State.

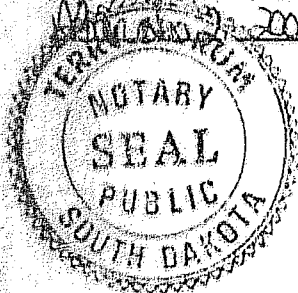
  
James A. Burg, Chairman  
Public Utilities Commission

Subscribed and sworn to  
before me this 14<sup>th</sup> day  
of June, 1999.


  
Notary Public - South Dakota

(SEAL)

My Commission Expires



Filed this 11<sup>th</sup> day of  
June, 1999

  
SECRETARY OF STATE

## ARTICLE 20:10

### PUBLIC UTILITIES

#### Chapter

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules.
- 20:10:03 Motor carriers under ICC.
- 20:10:04 Motor carriers not under ICC.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public warehouses.
- 20:10:12 Grain dealers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities. Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.

- 20:10:21 Energy facility plans.
- 20:10:22 Energy facility siting rules.
- 20:10:23 Gas and electric advertising rules.
- 20:10:24 Interexchange carrier and classification rules.
- 20:10:25 Telecommunications facility construction notice rules, Repealed.
- 20:10:26 Master metering variance rules.
- 20:10:27 Telecommunications switched access filing rules.
- 20:10:28 Telecommunications separations procedures.
- 20:10:29 Telecommunications switched access charges.
- 20:10:30 Assignment of N11 dialing codes.
- 20:10:31 Assessment of fees for intrastate gas pipeline operators.
- 20:10:32 Local exchange service competition.
- 20:10:33 Service standards for telecommunications companies.
- 20:10:34 Prohibition against unauthorized ~~switching changing of carriers~~  
telecommunications company and charging for unauthorized services.

#### CHAPTER 20:10:34

### PROHIBITION AGAINST UNAUTHORIZED ~~SWITCHING CHANGING OF~~ ~~CARRIERS~~ TELECOMMUNICATIONS COMPANY AND CHARGING FOR UNAUTHORIZED SERVICES

#### Section

- 20:10:34:01 ~~Definitions~~ Repealed.
- 20:10:34:02 ~~Requirements for independent third-party verification~~ Repealed.
- 20:10:34:02.01. Authorization methods.



20:10:34:03 Letter of agency form and content.

20:10:34:04 ~~Letter of agency form and content~~ -- Exception for checks.

20:10:34:04.01 Electronic authorization.

20:10:34:05 Complaints of unauthorized ~~switching~~ changing of a telecommunications company.

20:10:34:06 False, misleading, or deceptive statements prohibited.

20:10:34:07 Refund or credit of charges billed by unauthorized telecommunications company -- Payment for unauthorized change -- Opportunity for hearing.

20:10:34:08 Subscriber telecommunications bills -- Charges for change of telecommunications company.

20:10:34:09 Billing requirements.

20:10:34:10 ~~Authorized products or services~~ Notification of increase in rates.

20:10:34:10.01 Complaints of unauthorized billing of products or services.

20:10:34:11 Refund or credit of unauthorized charges -- Payment for unauthorized charge -- Opportunity for hearing.

20:10:34:01. ~~Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

~~(1) "Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service~~ Repealed.

Source: 25 SDR 89, effective December 27, 1998.

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

20:10:34:02. Requirements for independent third-party verification. When an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the third-party verification shall include:

(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;

(3) Verification data unique to the subscriber such as the subscriber's date of birth, and

(4) The name and toll free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications company. The electronic recording shall be retained by the third-party verification company for 12 months Repealed.

**Source:** 25 SDR 89, effective December 27, 1998.

**~~General Authority:~~** ~~SDCL 49-31-77, 49-31-85.~~

**~~Law Implemented:~~** ~~SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.~~

**20:10:34:02.01. Authorization methods.** No telecommunications company may charge a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

**Source:**

**General Authority:** SDCL 49-31-89.

**Law Implemented:** SDCL 49-31-89, 49-31-90, 49-31-91.

**20:10:34:03. Letter of agency form and content.** A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a written document. ~~the~~ The sole purpose of ~~which~~ the letter of agency is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the change order;

(2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;

(3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;

(4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's ~~interstate~~ interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's ~~intrastate~~ intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;

(5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;

(6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;

(7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications ~~carrier~~ company.

(8) If any portion of a letter of agency is translated into another language then each portion of the letter ~~or~~ of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and

(9) A toll-free number ~~that the subscriber may call to verify if the change has occurred~~ of the prospective telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-76, 49-31-85~~ 49-31-89.

~~20:10:34:04. Letter of agency form and content~~ — Exception for checks.

Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(2), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

20:10:34:04.01. Electronic authorization. Each telecommunications company electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Any call to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated



telecommunications company, and shall automatically record the originating automatic numbering identification.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89.

20:10:34:05. Complaints of unauthorized switching changing of a telecommunications company. Upon receipt of an oral or written complaint alleging an unauthorized switch in change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall investigate the complaint and advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide documentation, without cost to the commission or the subscriber, that confirms the subscriber's valid authorization to switch telecommunications companies. This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber provide documentation, within 30 days and without cost, showing that the change was authorized. The documentation shall be provided to the person alleging the unauthorized change. The company that initiates the change is the company that requests on behalf of a subscriber that the subscriber's telephone company be changed and seeks to provide retail services to

the subscriber. If a telecommunications company fails to provide the documentation, the change is of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (2)~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-90, 49-31-92, 49-31-93.

**20:10:34:06. False, misleading, or deceptive statements prohibited.** When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company -- Payment for unauthorized change -- Opportunity for hearing.** A telecommunications company which initiates a telecommunications carrier company change without authorization from the subscriber shall issue to the

subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which were paid by the subscriber and are attributable to telephone service telecommunications services from the unauthorized telecommunications company. If the unauthorized services were billed but not paid by the subscriber, the subscriber is not liable for the billed telephone services provided by the unauthorized telecommunications carrier. A telecommunications company which initiates a telecommunications carrier company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the switch change was unauthorized.

In addition, the telecommunications company which initiates a telecommunications company change without proper authorization shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85, 49-31-5 (4)~~ 49-31-89.

Law Implemented: SDCL ~~37-304-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.

**20:10:34:08. Subscriber telecommunications bills – Charges for change of telecommunications company.** A bill to a subscriber reflecting any charge ~~to a subscriber for a change in~~ changing the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing a to the new telecommunications company.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-5(3), 49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:09. Billing requirements.** A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89.

**20:10:34:10. ~~Authorized products or services~~ Notification of increase in rates.**

~~Any products or services listed on a subscriber's bill must be authorized by the subscriber.~~ Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change if it ~~results may~~ result in an increase in rates. Written notification of an increase in rates shall be stated on the bill, a bill insert, or a separate letter for each customer who has pre-subscribed to the company for toll or local exchange service. If the customer has not pre-subscribed to the

company, notification of an increase in rates shall be made through newspaper publication or by any other reasonable means.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented: SDCL ~~37-304-9~~, 49-31-3, 49-31-77, 49-31-85, 49-31-89.

20:10:34:10.01. Complaints of unauthorized billing of products or services.

Upon receipt of an oral or written complaint alleging the billing of an unauthorized product or service from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. The documentation shall be provided to the person alleging the unauthorized billing. The company that initiates the billing is the company that requests billing for a product or service on behalf of a subscriber and seeks to provide the product or service to the subscriber. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

General Authority: SDCL 49-31-89.

Law Implemented: SDCL 49-31-89, 49-31-93.



20:10:34:11. Refund or credit of unauthorized charges — Payment for unauthorized charge — Opportunity for hearing. A telecommunications company which charges initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL Chapter 1-26.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL ~~49-31-77, 49-31-85~~ 49-31-89.

Law Implemented: SDCL ~~37-30A-9, 49-31-3, 49-31-77, 49-31-85~~ 49-31-89, 49-31-93, 49-31-94.